



# FOI Upstream Regulation Research Report

The Information Commissioner's Office

**15 March 2023**

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# 1 Executive Summary

## Introduction

The Information Commissioner's Office (ICO) recently launched its upstream regulation team, with the aim of proactively preventing breaches of the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR). In order to help understand how to best support the public bodies they regulate, and therefore enable upstream regulation, the ICO commissioned IFF Research to conduct qualitative research with FOI practitioners within public bodies to learn more about their experiences of dealing with Freedom of Information (FOI) requests, and what support they would like from the ICO going forward, to enable them to meet (or continue to meet) their statutory obligations.

## Methodology

Qualitative interviews were conducted with 30 FOI practitioners across 5 public sectors between 19<sup>th</sup> December 2022 and 19<sup>th</sup> January 2023, to find out more about their experiences of dealing with FOI requests, and their views on how the ICO can support them with FOI going forwards. These qualitative interviews were complemented by 5 additional interviews with stakeholders from expert bodies who have an interest in FOI, as well as desk research to gain a deeper understanding of compliance with information legislation.

Findings which have arisen from the research are perceived by FOI practitioners and stakeholders to be useful areas in which the ICO could develop. However, it should be noted that these are suggestions only and, dependent on resources, the ICO may opt to focus on some of these suggestions over others.

## Research findings

The following findings outline a summary of where the ICO could add value to their upstream regulation work. A comprehensive list of all areas of added value can be found in [Appendix A](#).

### Examples of good practice and how this can be adapted for wider use

**The ICO could consider developing and publishing organisational tools (such as spreadsheets and templates for managing and responding to requests) for organisations which don't have the internal resource to develop these themselves. Those organisations could then take these tools away to tailor for their own practices.** Having good internal systems, such as organisational tools, automated systems and templates were seen as good practice, as they ensured consistency in responding to FOI requests, and reduced time burden on practitioners.

**The ICO could encourage good time management and systems to help with this in its guidance.** It was found that having good systems in place, such as internal deadlines and good escalation processes, ensured that FOI requests were responded to within statutory deadlines.

**The ICO could encourage an open attitude and culture within organisations around FOI.** Being customer oriented, approachable and amenable when dealing with requesters was seen to promote an image of transparency and also make any further communication with them easier.

**The ICO could offer basic training or guidance on the FOI process to those who are unfamiliar with it, and/or do not get involved in the process very often.** It was seen to be good practice for everyone in an organisation, not just FOI practitioners, to be aware of FOI, how it works, and the importance of complying with legislation. This was found to drive efficiency in the FOI process, with all involved in collating information for an FOI request aware of their responsibilities.

**The ICO could facilitate networking opportunities for practitioners to come together, discuss challenges, and problem solve.** This is already done at a local level by certain public bodies, and these networks were seen to be useful platforms for collaborating with others.

### Pressures and frustrations of compliance and possible solutions

**As mentioned under good practice, the ICO could create tools and templates which organisations can adapt for their own FOI processes.** A main pressure and frustration around compliance was around resourcing, both within FOI teams and for those responsible for collating information, who struggled to balance requests with their main job. While the ICO is unlikely to be able to directly alleviate resourcing problems, creating tools and templates that practitioners could use, as opposed to creating their own, would save them time and relieve pressure.

**The ICO could offer training around exemptions and when they apply.** Staff within the wider organisation often lacked knowledge on FOI processes, especially where exemptions applied. This meant that FOI officers often faced unwarranted push-back from people about the release of information that they had no reason to withhold.

**The ICO could offer practitioners additional support on using Section 14.** Requesters would sometimes not accept an organisation's line that they could not provide the data they wanted, and continued to make repeat, sometimes vexatious, requests. This frustrated practitioners as it was a time burden to respond to these requests.

**The ICO could create, or co-create with other relevant organisations that work with requestors, guidance on how to write a competent and coherent FOI request, accompanied by guidance for practitioners on how to effectively engage and communicate with requestors.** Practitioners mentioned that the wording of some requests was not clear, and that it took additional resource to either clarify with the requester what they want, or gather information for a request that had been misunderstood.

### Suggestions for additional tools, guidance and training from the ICO, and potential partners

**The ICO could develop and facilitate its own training.** There was a strong appetite for this, with the ICO seen as a legitimate source of information. Types of training that were mentioned as being useful included:

- **Sector-specific training**, which would be useful for providing FOI practitioners from different sectors with specific information which is relevant to their work;
- **Training on exemptions** and how to apply them, in particular to complex requests;
- **Training on changes in case law**, to keep up to date with these;
- **Training for colleagues in non-FOI roles** on FOI basics;
- **Training on the ICO's own processes**, which practitioners could learn from and alter for their own practices.

Training formats that would be useful included:

- **Bitesize training**, such as short online videos and/or training modules, to break down complicated legislation;
- **Face-to-face training**, to increase engagement with material.

**The ICO could continue to offer guidance and expand the remit of what it offers.** Guidance was considered to be one of the ICO's strong points; FOI practitioners said that they found current guidance extensive, comprehensive and useful. Nevertheless, there is still scope for this guidance to be improved and built upon. For example, it would be useful for the ICO to:

- **Create summaries on guidance documents**, that would allow practitioners to quickly understand the document and its relevance to them.
- **Clearly update guidance when case law has been changed** and to communicate these changes clearly when they occur, to avoid any confusion with document applicability.
- **Publish key tribunal decisions** and offer commentary on their implications.
- **Publish examples of decision notices** which organisations can use as precedence for their own decisions.
- **Develop additional self-assessment tools** to help practitioners evaluate their approaches.

**The ICO could improve awareness of its helpline, develop the expertise of its operators, and take learnings from its Welsh helpline.** There was mixed awareness of the ICO's helpline, and based on feedback from practitioners that have used it, there is also scope for improvement around the service, ensuring that practitioners are able to get targeted advice as opposed to a regurgitation of website material. Practitioners in Wales highlighted the differences in utility between the ICO's Welsh and English helplines, so the ICO could explore what lessons around good practice could be taken from the Welsh helpline, to ensure that practitioners across the country receive the same level of service.

**The ICO could improve the functionality of its website.** This is with the aim of helping practitioners navigate it more easily and find the information they need quickly. This may include making it clear which guidance is most up to date (and/or removing older versions), and enhancing the search function, for example, adding a filter for more recent documents.

**In the development of any new materials, the ICO could partner with training providers, civil society groups and FOI practitioners.** It was thought that training providers could provide a base for any new materials, civil society groups could provide useful feedback in the development of new materials, and FOI practitioners could be asked to review any new materials that are being developed and provide feedback on their utility.

### How the ICO can inspire proactive transparency

**The ICO could build a greater evidence base of the benefits of proactive transparency.** This would be to demonstrate the benefits of proactive transparency to those bodies who don't currently engage with this way of working. This may include data on any resulting reductions in requests and/or workloads, and could be accompanied by guidance on any benefits to public bodies.

**The ICO may want to reassess their guidelines on the use of publication schemes to communicate to requesters that these are not necessarily the only place to find information.** For example, as well as looking at a publication scheme, they may also want to use search engines to see what information is available before putting an FOI request in.

### The overall picture of compliance

**The ICO could further encourage public bodies to publish compliance data.** This could either be through implicit means like guidance, or explicit means like targeted communications.

**The ICO could provide more networking opportunities for FOI practitioners.** As well as being a platform for sharing knowledge among practitioners, it would also provide practitioners with a chance to understand compliance across their peers, perhaps instigating a positive behaviour change.

**The ICO could provision an open-source database platform for FOI request management or set general standards for data collection.** This would encourage the standardisation of compliance data collection and enable the ICO to improve the overall picture of compliance by being able to easily compare across public bodies. Following on from this, the ICO could utilise its improved picture of compliance to better identify how prevalent compliance issues are, where they are occurring, and how to address them.

## 2 Background and Methodology

### Background and purpose of the research

'Upstream regulation' is the concept of supporting public bodies to perform in line with their statutory duties and prevent breaches of the FOIA and EIR from occurring in the first place. This is opposed to reacting and responding to breaches of access to information once they have already occurred. The ICO has recently created a new Upstream Regulation team to help with the facilitation of the former type of regulation.

The ICO is conscious that upstream regulation will be most effective if it works closely with those that they regulate, and wants to work in partnership with these bodies. This is with the aim of upholding information rights and building trust and confidence in those responsible for making public information available.

To this end, the ICO commissioned IFF Research to conduct qualitative research with FOI practitioners, who have responsibility for delivering FOI work, to understand their experiences of the FOI process and how the ICO can support them (i.e. how they can enable upstream regulation) in dealing with FOI requests. Within this overarching aim, the research sought to understand:

- Examples of good practice and how these can be adapted for wider use.
- The pressures and frustrations of compliance and possible solutions.
- The usefulness of tools and products already produced by the ICO.
- What additional tools, guidance and training (and in what formats) the ICO could offer to public bodies to improve compliance with the FOIA and the EIR based on gaps identified in this research.
- Who/what are the key organisations/engagement channels to partner with in producing and piloting any new tools training and educational materials.
- How the ICO can inspire proactive transparency, and whether proactive publication reduces requests for information.
- The picture of compliance with the FOIA and EIR outside of central government, where good statistical evidence already exists.

This report addresses these aims, drawing conclusions and identifying areas where future upstream work could add value.



## Methodology

### Interviews with FOI practitioners

Interviews were conducted with 30 FOI practitioners across 5 different public sectors, which were selected due to the volume of complaints the ICO have received; these were local government bodies, central government bodies, and the health, education and justice sectors. Interviews aimed to understand experiences of dealing with FOI requests, and views on how the ICO can support them going forwards. A breakdown of participants and the sectors they worked in can be found in [Appendix B](#).

Participants were identified through existing ICO contact networks and IFF desk research, and participants were recruited according to sector quotas. Fieldwork took place between 19<sup>th</sup> December 2022 and 19<sup>th</sup> January 2023.

These interviews covered:

- The organisations' current practices around FOI requests.
- Their use of training, guidance materials and tools.
- What additional tools, guidance and training they thought the ICO could offer (and in what formats).
- Any barriers to compliance and what can be done to overcome these barriers.
- Examples of good practice around dealing with FOI requests from their organisation.

Further detail on topics covered can be found in the topic guide in [Appendix C](#).

### Interviews with FOI stakeholders

In order to further deepen understanding, and to identify appropriate partners for the ICO to engage with to develop further training and support, interviews were also conducted with stakeholders from expert bodies who have an interest in FOI. Sample from these interviews was identified through a mixture of findings from interviews with FOI practitioners, existing ICO contacts, and desk research. Fieldwork took place between 18<sup>th</sup> January and 6<sup>th</sup> February 2023.

These interviews covered:

- Stakeholder views on the current general picture of compliance with FOI requests.
- Views on public bodies' FOI processes.
- Views on training, guidance materials and tools.

Further detail on topics covered can be found in the topic guide in [Appendix D](#).

### **Desk research and literature review**

Desk research was conducted to satisfy the objective of understanding the picture of compliance with the FOIA and EIR outside of central government. This involved:

- Conducting a scoping exercise, to identify all possible sources of information.
- Assessing the available sources, to identify which were relevant, robust, and the extent to which they could address understanding around compliance.
- Writing a formal literature review, collating evidence and building an overall picture of compliance. The findings from this literature review are incorporated into this report, and can be found in full in [Appendix E](#). Sources used for the literature review include:
  - A small number of academic papers and research reports.
  - Annual reports published on websites or disclosure logs from local authorities, NHS trusts and other public bodies.
  - Responses to direct emails to bodies where we were not able to locate FOI performance data online.

### **How to read this report**

The report structure is as follows:

- The Executive Summary is a brief summary of the report and outlines key findings from the research.
- Chapter 3 outlines areas of good practice identified by FOI practitioners, and suggestions as to how these practices could be adapted for wider use.
- Chapter 4 outlines the main barriers to compliance that FOI practitioners face, as well as potential solutions and areas where the ICO can help practitioners overcome these barriers.
- Chapter 5 outlines feedback received on existing ICO tools, guidance and training, and suggestions as to what additional resources the ICO could consider producing.
- Chapter 6 outlines current approaches and views on information transparency and publication, and suggestions for how the ICO can inspire proactive transparency.
- Chapter 7 gives an overview of the current picture of compliance with FOI regulation.

- Chapter 8 summarises the research findings and identified areas where future upstream work could add value.

Detailed suggestions about how the ICO could add value in its upstream work are made throughout each chapter which relate back to the seven objectives of the research, and are highlighted in green boxes. A summary of all suggestions are presented in [Appendix A](#) of this report.

For the practitioner interviews, quotations are attributed by sector and by length of experience with FOI processes. Numbers in brackets at the end of attributions are a unique marker to identify different respondents with the same characteristics.

As this research is qualitative in nature, findings are indicative of a range of views across sectors, but they should not be interpreted as being representative of the views of public bodies as a whole. As FOI practitioners needed to opt-in to this research, the practitioners interviewed may not be fully representative of the wider body of FOI practitioners.

All of the suggestions outlined in this report are based on findings which have arisen from this research, and are perceived by FOI practitioners and stakeholders to be useful areas in which the ICO could develop. However, it should be noted that these are suggestions only and, dependent on resources, the ICO may opt to focus on some of these suggestions over others.

### 3 Current Good Practice

This chapter outlines areas of good practice with regards to the FOI process and compliance, identified by FOI practitioners as being in place within their own organisations, and how these good practices could be adapted for wider use.

#### Internal Systems

Most FOI practitioners perceived their organisation to have good systems in place to deal with the FOI process. Examples of good practice focused on having good organisational tools such as spreadsheets, databases and IT systems to be able to effectively prioritise requests, assign them to relevant departments and keep a track of responses. Some stakeholders were also aware of organisations having these systems in place.

*“We have a spreadsheet showing what the FOI request is and what information they have requested, and we keep the replies that we've sent.”*

#### Justice Sector, more than 5 years FOI experience (1)

Several FOI practitioners also mentioned having self-designed automated systems which would, for example, automatically allocate case numbers and send acknowledgements. Additionally, some stored templates (for example, from previous responses and for exemptions) to be used and filled in.

FOI practitioners perceived these organisational tools to form a part of their good practice for several reasons. Firstly, time burden on practitioners is minimised if organisational tools can be used to administrate large parts of the FOI process. Secondly, a rigidity in using these documents, systems and templates was seen to ensure a consistency in responding to FOI requests, in the same format and within the same timeframe, therefore promoting the reputable image of the public body.

Many bodies mentioned using some or all of the tools mentioned above, but it should be recognised that smaller organisations may not have the resource or budget to enable these functions themselves. To promote this best practice more widely, the ICO may want to consider developing tools which public bodies can adapt and use for their own internal use. While this may not stretch to the development of automated systems, tracking spreadsheets and response templates may be easier to develop. This would be with the hope of minimising time burden and promoting consistency of managing and responding to FOI requests.

#### Areas to consider to promote good practice:

- A. Look into developing and publishing organisational tools such as spreadsheets and response templates, which smaller organisations could use and tailor for their own practices. This would aid with the administration of the FOI process, and save organisations time and resource in developing their own materials.

## Time management

Another area of good practice was around time management, making sure that FOI requests were responded to within the statutory deadline.

*"Time is of the essence - don't sit on things... even the most simple FOI requests can take longer than you think."*

### Central Government, less than 1 year FOI experience (2)

FOI practitioners also mentioned working to their own internal deadlines, to allow for any internal queries to be raised or conversations to be had (for example, on how much information to release, or where to find specific pieces of information). Related to this was having a good escalation process in place if service areas (i.e. the department dealing with collating information related to the FOI request) were facing any difficulties in gathering data and/or putting a response together.

*"We'll give them a deadline to return, and if they don't come back, it's escalated to the supervisors and then escalated to me... [the statutory deadline for responding is] 20 days so we try to give people a week to come back to us."*

### Justice Sector, more than 5 years FOI experience (2)

This way of working enabled practitioners to stay compliant with FOI regulations, while also allowing time to make sure that responses are collated appropriately. The role of the ICO in promoting this good practice is likely to be limited as there is no tangible system to put in place. However, the ICO may want to encourage or suggest the use of internal deadlines in any related guidance it publishes and promote it as a way to enable rigidity of responses and compliance with statutory deadlines.

#### Areas to consider to promote good practice:

- B. Incorporate the suggestion of using internal deadlines, before the statutory deadline for issuing a response to an FOI request, into any related guidance that the ICO publishes. This could include suggested or example timelines. This would be with the aim of ensuring compliance with statutory FOI deadlines.

## Attitude and culture

A further piece of perceived good practice, particularly for practitioners within local government, central government, and the justice sector, was around the attitude and culture of the organisation when acknowledging and responding to FOI requests. FOI practitioners mentioned the desire and need to be customer oriented, approachable and amenable when responding to FOI requests.

*"My team are fairly approachable, they're all amenable, they're all happy to have discussions."*

### Local Government, more than 5 years FOI experience (1)

This was seen to be good practice for two reasons; not only does it promote an image of transparency, but it also makes communication with a respondent easier if any clarification or amendment is needed on their request, therefore also making a practitioner's job easier in the long run.

*"Requesters are more likely to interact with us in a favourable manner if they know we genuinely care and not just bluntly refuse requests."*

#### **Central Government, less than 1 year FOI experience (1)**

Stakeholders also believed that the compliance levels of public bodies were driven somewhat by individual FOI practitioners that were committed to upholding FOI legislation.

The scope for the ICO to promote wider good practice around this is likely to be limited, as it would require cultural and structural changes at an organisational level which, for various reasons (e.g. senior buy-in and internal resource) may be difficult to implement. Nevertheless, this type of amenable attitude and culture is something which the ICO could encourage as good practice within their guidance, emphasising the benefits, in the hope that it is implemented by organisations by choice. These communications should be especially targeted at senior leadership within organisations, as they are likely to be the key drivers of cultural change. This may be done by providing case studies illustrating where having an amenable attitude has made the FOI process smoother.

#### **Areas to consider to promote good practice:**

- C. Encourage an amenable attitude and culture as part of your communications around FOI, in the hope that it is implemented by organisations. These communications should be especially targeted at senior leadership within organisations, as they are likely to be the key drivers of cultural change. This may be done by providing case studies of where having an amenable attitude has made the FOI process smoother.

### **Dissemination of knowledge**

Two areas of good practice were mentioned related to the dissemination of knowledge. Firstly, some FOI practitioners considered it to be good practice to ensure that everyone in an organisation, not just FOI practitioners, is aware of FOI and the regulations around this.

*"[People need to] understand what FOI is, what a request is, what is and isn't required of them."*

#### **Education Sector, more than 5 Years FOI experience (4)**

This is due to the fact that people from different departments may be involved in collating information for FOI requests and responding to them, and there is a need for these people to be aware of the importance of responding to FOI requests within statutory deadlines, gathering the correct information, and making sure that no information is incorrectly held back. Knowledge at the more

senior level of the organisation was seen to be key to the latter, with senior buy-in seen to drive compliance and transparency. Overall, there was a view that the more that everyone in the organisation knows about FOI, and the more that they understand the importance of compliance, the smoother the overall FOI process is, and the less resource FOI practitioners have to use in chasing service areas for information or a response.

Both FOI practitioners and stakeholders mentioned that to help with the dissemination of knowledge around FOI, it would be useful for the ICO to offer guidance or training at a very basic level, to inform those who are completely new to FOI processes and/or do not deal with them very often, to understand key legal requirements in simple terms.

*“If I go to the ICO website it’s not very often that I find something in relation to that basic training stuff that I would need. I think it would be quite handy to have something that could be used for people who are less well aware on how to deal with a query when it comes in, or how to deal with information. What are the basics?”*

**Education Sector, more than 5 years FOI Experience (2)**

*“How would I be explaining this for someone who’s just encountered FOI for the first time, what are the important things for them to know?”*

**Stakeholder (4)**

**Areas to consider to promote good practice:**

- D. Look into offering basic training or guidance on the FOI process and the FOIA for people who are completely new to FOI processes and/or do not deal with them very often, or are more peripheral to the process (e.g. part of the wider organisation). This is with the aim of making sure that everyone in an organisation, not just FOI practitioners, are aware of the FOI process and the importance of compliance.

FOI practitioners also disseminated knowledge through either formal or informal networks, usually formed of organisations operating in the same sector in the local area. These networks were mentioned by practitioners in central government, local government, and the health sector, and took various forms such as local forums or conferences and email groups.

These networks were seen to be valuable as a place to go to for help if facing difficulty with responding to a particular request, as others may have experience in dealing with a similar request and be able to give advice. They were also used to ensure consistency of responses across public bodies if a ‘round robin’ request had been sent to, for example, all local authorities in the area.

*“If somebody gets stuck and they don’t know how to deal with the request or they’re curious as to what other people are doing, then we share information.”*

**Health Sector, more than 5 years FOI experience (1)**

Ultimately, these networks ensured that public bodies were able to respond to requests appropriately and consistently with other bodies.

While there was not an indication that the ICO should replace these networks that already exist, both FOI practitioners and stakeholders indicated that there would be a place for the ICO to facilitate further networking opportunities for FOI practitioners to come together, disseminate knowledge and collectively problem solve. For example, one stakeholder flagged that there used to be FOI conferences (which they believed were supported by the ICO) in the years immediately after the publication of the FOIA. They thought that it would be useful to reinstate these to promote knowledge sharing, both from the ICO and among FOI practitioners. Another stakeholder had also run their own knowledge sharing event for public bodies which was well received, and said there was scope for the ICO to do the same. These sorts of events may be especially useful for smaller and/or more isolated organisations who do not have regular contact with other FOI practitioners.

*"[I would like there to be] some more social way of [problem solving], so that people can find somebody who's in a similar situation to them and they can bounce ideas between themselves."*

**Central Government, more than 5 years FOI experience (1)**

*"What would be most valuable would be capturing the expertise of the really experienced FOI practitioners from authorities that are successfully implementing FOI and have good compliance rates; sharing their knowledge about how they've managed to achieve that and dealing with some of the practical issues that they face, and how to overcome those."*

**Stakeholder (2)**

**Areas to consider to promote good practice:**

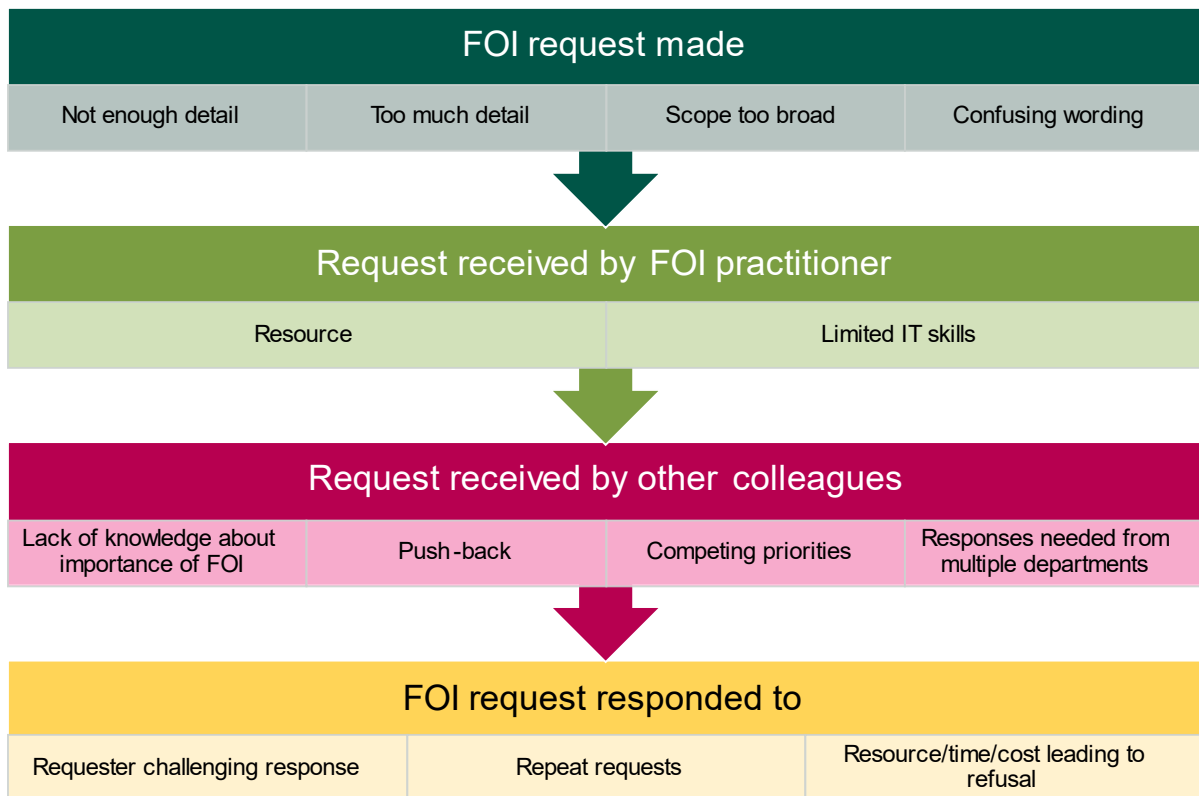
- E. Facilitate networking opportunities among FOI practitioners, complementing the networks that already exist. These networks or conferences would be places for practitioners to come together, disseminate and share knowledge and collectively problem solve.



## 4 Current Barriers to Compliance

This chapter outlines the main barriers that FOI practitioners face to being compliant with FOI regulation, as well as potential solutions and suggestions as to what actions the ICO can take to help practitioners overcome these barriers.

The diagram below outlines the typical journey of an FOI request and the potential barriers or frustrations encountered at each stage.



### Staff resource, knowledge and amenability

One of the main barriers that FOI practitioners mentioned was a lack of staff resource to deal with the volume of FOI requests they received. This was an especially salient finding for smaller organisations and teams, where there may only be one person able to handle such requests.

*"FOI requests are burdensome, even with a dedicated member of staff dedicated to handling them. Many [organisations] would have a bigger team for the volume of requests [they] get."*

**Education Sector, more than 5 years FOI experience (4)**

Some practitioners found that if they took time off or were ill, there would be no-one to cover for them and they would be unable to meet deadlines on some requests.

Perhaps a more complex challenge, on top of general resourcing, was to coordinate with staff from other departments when information was needed and to get that information before the statutory deadline. When there were competing priorities, those holding the required information tended to prioritise their main jobs, which were perceived to be more important than taking the time to respond to an FOI request. Additionally, when absences occurred in small teams, FOI officers would often not be able to obtain the required information on time. This became further complicated when a request required input from multiple departments.

*“When your staff are off sick or they're treating so many patients, they just do not have time. You can't tell them that it's more important to answer somebody's dissertation question...than it is to look after this patient.”*

#### **Health Sector, more than 5 years FOI experience (1)**

*“Why does it take 2 months to get this document? Well, because there was no good way of finding it until someone came back from holiday and that's just the way it is.”*

#### **Stakeholder (4)**

*“The deadlines don't take into account the circumstances of struggling local authorities. And even though it's a statutory requirement, do you do your work commissioning services for children, families, adult social care? What's the priority, the people or the request?”*

#### **Local Government, more than 5 years FOI experience (2)**

Easing resourcing issues across public bodies is unlikely to be within the scope of support that the ICO is able to provide. However, the ICO could provide additional support to that already offered to further alleviate pressure on those responding to FOI requests, thus reducing the level of resource needed. The obvious way for this to be done, as mentioned in Chapter 3, would be for the ICO to develop tools which public bodies can adapt and use internally, such as administrative spreadsheets and response templates.

#### **Potential solutions to frustrations around compliance:**

- A. Look into developing and publishing organisational tools such as spreadsheets and response templates, which smaller organisations could use and tailor for their own practices. This would aid with the administration of the FOI process, and save organisations time and resource in developing their own materials.

Although not mentioned by FOI practitioners themselves, one issue that was raised by stakeholders was a concern that some practitioners lacked the knowledge, specifically around IT skills, to efficiently gather data needed to fulfil an FOI request. For example, some may not know how to conduct a Boolean search in order to narrow down results, or filter spreadsheets to find specific information. This lack of knowledge puts a time and resource burden on the practitioner, and it also increases the risk of not responding to a request on the grounds of it costing too much to find the information.

*"If they're searching for the requested information, they have very limited ability to narrow the request...and that means that they have to open each hit individually to see if it's on target...it then becomes more likely that they will be entitled to refuse the request on cost grounds because the time spent...exceeds the cost limit, and then they're then allowed to refuse on the basis of their estimate."*

**Stakeholder (1)**

It may be that there are organisational limits on how much this process can be improved on; for example, not all public bodies will have Boolean searches built into their internal operating systems. However, it may be useful for the ICO to offer training on the basics of data analysis and collation, so that FOI practitioners are able to search for information more efficiently, and therefore reduce the risk of FOI requests being unnecessarily rejected. Alternatively, the ICO could signpost FOI practitioners to relevant training in this area and encourage uptake.

**Potential solutions to frustrations around compliance:**

- F. Offer training on how to analyse and collate data more efficiently, to reduce time burden on FOI practitioners and reduce request refusals.
- G. Signpost practitioners to relevant training on how to analyse and collate data more efficiently, and encourage uptake.

As mentioned in the previous chapter, FOI practitioners also mentioned difficulties around colleagues in other departments not understanding the importance of FOI; practitioners would then have to take the time to explain this importance, eating into their resource as well as the timeframe to responding to the FOI request.

*"The main difficulty is extracting the information from the departments. We're always chasing - especially if it's a consultant...it's needing forceps and a ventouse [to extract]."*

**Health Sector, more than 5 years FOI experience (2)**

*"FOI is not seen as a priority across the organisations, I don't think many people understand the importance of it from a statutory and public confidence perspective as well if I'm honest."*

**Justice Sector, less than 1 year FOI experience**

Some practitioners also experienced push-back from colleagues in other departments who were reluctant to release information, with stakeholders mentioning this as a perceived barrier for public bodies as well.

*"Sometimes there are FOI officers who are attempting to be a force for greater openness, but internally with their colleagues they are dealing with people who are not inclined to be very open."*

**Stakeholder (1)**

In some situations, colleagues in other departments did not seriously regard a request until a complaint had been made by a requester. This lack of engagement with the FOI process was often perceived to be related to a lack of knowledge about exemptions and when they can be applied.

*"A lot of education is needed for people as regards exemptions internally. They'll say, 'We can't release this' and we'll say 'Why?'"*

**Health Sector, 4-5 years FOI experience (2)**

*"[The problem is] getting people internally to understand that we need to see information they might fear is sensitive - we need to see it to see what exemptions apply."*

**Justice Sector, more than 5 years FOI experience (2)**

An increased engagement with the FOI process is likely to require a cultural change within an organisation, which may be difficult for the ICO to directly influence. However, as mentioned in Chapter 3, it would be useful for the ICO to offer basic training and/or guidance to staff in public bodies beyond FOI teams, who may not know a lot about the FOI process and/or do not deal with FOI requests very often. This training or guidance would outline key legal requirements and the importance of compliance. A cultural change may also be assisted by the ICO offering guidance and/or training specifically on exemptions, for example, when they would apply and how to apply them. This would hopefully make it clearer to those pushing back about releasing information what does and does not stand, therefore reducing this push back and easing pressure on FOI practitioners. This could either be in the form of 'train-the-trainer' materials, for the FOI practitioner to trickle down through their organisation, or direct training or guidance accessible to anyone on the ICO website.

*"Exemptions is probably the one area of most interest to me...just to know more in-depth what those exemptions mean."*

**Health Sector, 1-3 years FOI experience**

**Potential solutions to frustrations around compliance:**

- D. Look into offering basic training guidance on the FOI process and the FOIA for people who are completely new to FOI processes and/or do not deal with them very often. This is with the aim of making sure that everyone in an organisation, not just FOI practitioners, are aware of the FOI process and the importance of compliance.
- H. Offer more specific training/guidance on exemptions, where they apply and how to apply them. This increased knowledge, both on the part of FOI practitioners and others in the organisation, would hopefully reduce reluctance in releasing certain pieces of information, and therefore increase compliance with FOI.

**Actions of requesters**

FOI practitioners mentioned several issues related to the actions of requesters that acted as barriers to compliance.

Firstly, there were issues with requesters misunderstanding what information organisations had access to. FOI practitioners felt that some requests were hard to answer because requesters did not understand that some information may not be held, that it was not in the format requested, or that different sets of information could not easily be linked together. Despite practitioners informing requesters that this was the case, some requesters did not believe this line, and accused the organisation of intentionally withholding information. This misunderstanding led to requesters making repeat requests in vain.

*“I have concerns that some requesters expect a lot more detail than we can give. Some people ask for information to the nth degree about something, and if they don't get it, you sense the tone of anger in their emails.”*

### Health Sector, 1-3 years FOI experience

It should be noted that one stakeholder held a more sympathetic view towards requesters, seeing complex requests as being down to a lack of knowledge rather than a misunderstanding. For example, if a requester is not clear on the information that a public body holds, they may try and capture as much as possible within the wording of that request. This may be an argument for public bodies publishing more information proactively, although it is not guaranteed that this information will contain exactly what a requester is looking for.

Practitioners also said that the wording of some requests was not clear. Sometimes shorthand was used, or the way in which requests were written meant that they could have been interpreted in multiple ways. On occasion, practitioners were unsure if a request was meant to be interpreted in a certain way, or if there had simply been a grammatical error in the writing.

*“It's quite difficult to work out what they really mean. People who these days only tend to type in terms of text, grammar makes quite a lot of difference in terms of a request... Sometimes I have to go back and establish a degree of clarity with them.”*

### Central Government, more than 5 years FOI experience (1)

As mentioned above, practitioners flagged issues with people making repeat requests. While legislation allows for similar requests to be made after a reasonable interval, some made the same request repeatedly. This caused frustration among practitioners who had to spend time responding to these requests each time they were made, on top of all other requests they were already dealing with. While this would be an argument for publishing certain pieces of information to reduce these repeat requests, this wouldn't apply to those repeat requests where information was not available for any reason, and this was not accepted by the requester.

Whether or not the actions of requesters are down to misunderstandings or a lack of knowledge, there is scope for the ICO to assist with the behaviour and actions of requesters in several ways. For example, there was appetite for support with issuing Section 14 responses (whether that be guidance, training, or through the ICO helpline), understanding how best to apply the provision and the requirements of this.

*“How and when to apply this notion of ‘vexatious’ to a request.”*

**Local Government, more than 5 years FOI experience (8)**

There was also a suggestion that the ICO could issue guidance for requesters on how to effectively make a request, such as what language to use, and how to ensure clarity of the request. While guidance around this already exists, it was clear from respondents that they were not aware of it, and so development of further guidance around this would be useful. This could be accompanied by complementary guidance for practitioners on how to effectively engage and communicate with requesters to obtain a satisfactory outcome (for example, asking clarification questions on a request, or as one stakeholder suggested, offering a compromise as to what information could be provided, as opposed to automatically rejecting it). Not only would this ensure that the requester was hopefully satisfied with the response received from the organisation, but it would also reduce resource burden on FOI practitioners, if a request is clear from the outset, and also ensure that the organisation is outwardly seen as reputable, amenable and transparent. This also links back to the identified good practice of being amenable to requesters.

**Potential solutions to frustrations around compliance:**

- I. Consider ways in which the ICO can support practitioners in issuing Section 14 responses, in order to reduce the number of repeat requests received. This could be through training, guidance and/or through their helpline.
- J. Offer further guidance for requesters on how to write a comprehensive and coherent FOI request, to reduce FOI practitioner frustrations about not being able to clearly interpret the request.
- K. In tandem with suggestion J, the ICO could consider publishing guidance for practitioners on how to effectively engage and communicate with requesters to obtain a satisfactory outcome for all (also see suggestion C).

## 5 Tools, Guidance and Training

This chapter discusses which current tools, guidance and training FOI practitioners find the most useful, and provides suggestions for how these could be improved; and what additional tools, guidance and training can be developed.

### What current tools are most useful

The ICO was mentioned as the main source of guidance and tools for organisations, which in the main were seen as being of high-quality and useful. A frequently used tool was the ICO website. Most practitioners utilised it to look for specific guidance, resources such as the self-assessment toolkit, or Decision Notices, and saw it as a first port of call when they were unsure about anything.

Guidance documents on the website were seen as a reliable reference for information for practitioners when preparing for public interest tests or refreshing their knowledge on less commonly used exemptions to be used for a request. Some quoted the wording found in the guidance to ensure responses were standardised. One practitioner recalled using the guidance on vexatious requests to ensure they had covered all the points on why a request should be considered as such, which helped them to pre-empt potential complaints. Some practitioners mentioned using the ICO's self-assessment toolkit, which they found helpful. However, not all practitioners had heard of it, and one stakeholder found that it was too basic. Finally, the Decision Notices database was regularly used as a reference when preparing internal reviews.

*"[The decision notice database is] useful, especially when you're dealing with a request on a certain topic, to go and see previous ICO approaches on that same topic."*

#### Local Government, more than 5 years FOI experience (4)

Other ICO tools that were used by practitioners include the ICO helpline, newsletters, ICO handbooks and ICO webinars. The ICO helpline was often used by practitioners who needed advice quickly. However, as detailed later on in this chapter, not all practitioners seemed to be aware of this and there were mixed views on how useful they found it.

Some practitioners were signed up to the ICO newsletter, and they mentioned that it was helpful to get regular updates and that it allowed them to keep abreast of changes in case law. They also appreciated the range of topics in each newsletter. A few practitioners had also used the ICO's handbooks; while they were unable to recall exactly which handbooks had been used as this was a number of years ago, they felt that it was useful to have all the information in one place to refer to. They also found the wording straightforward which made the content easy to understand. Finally, some also mentioned attending webinars run by the ICO on various FOI-related topics, although they were unable to recall which. They also found it useful to have recordings of the webinars they could later refer to or direct staff to watch.

Some FOI practitioners also mentioned using guidance and tools from sources other than the ICO. These included legal encyclopaedias, bulletins from training providers, the 'What Do they Know'

website and disclosure logs from other organisations. As mentioned in Chapter 3, some organisations (such as hospitals and local authorities) also mentioned having local networks with similar organisations that helped one another with queries.

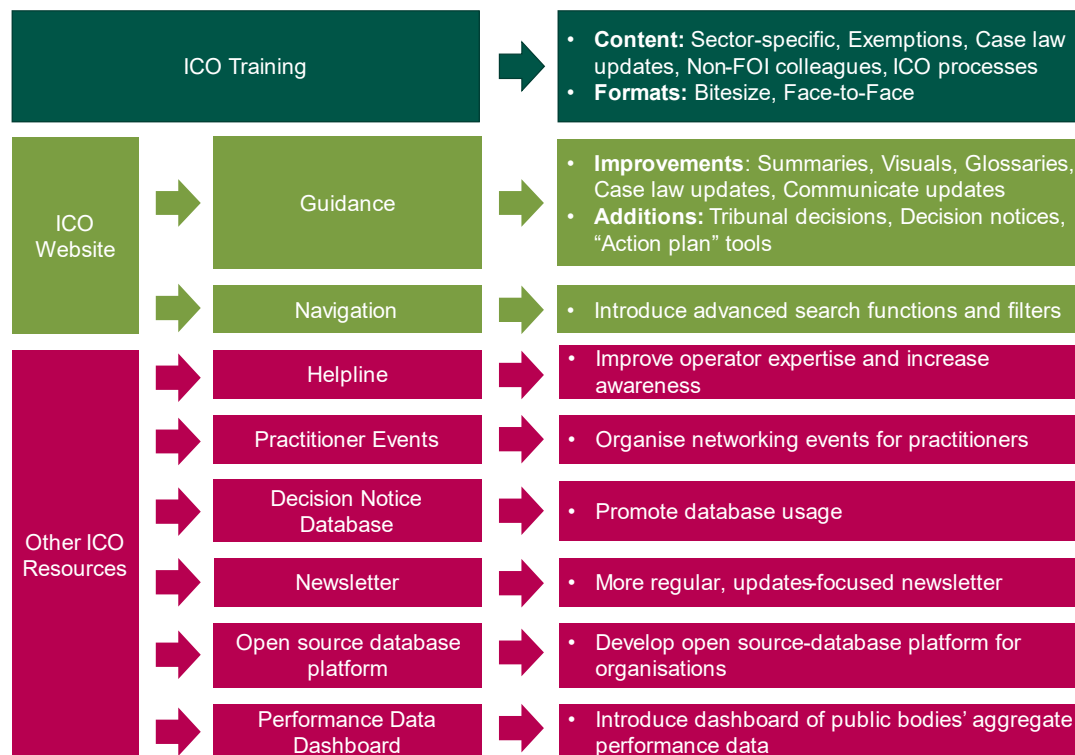
*"It's good to see if both trusts have done the same response ... if we've interpreted the request in the same way."*

### Health Sector, 1-3 years FOI experience

Many practitioners had also attended training by commercial providers in a range of formats including webinars, short courses and longer courses leading to qualifications such as The Practitioner Certificate in Freedom of Information. Practitioners found external training useful because it gave them a good overview of the requirements of the FOIA and the exemptions, especially for those who had just started in the field. In some sectors, practitioners also had access to sector-specific training such as from the National Police Chiefs' Council (for police forces) and Civil Service Learning (for those in Central Government).

### Suggestions for additional tools, guidance and training

Practitioners were also asked what kinds of tools and guidance the ICO could provide that would be the most useful for them, and a range of solutions were suggested. The diagram below shows a summary of the suggestions grouped into broad themes; these are explained in more detail in the following sections.





## Training from the ICO

While the ICO currently focuses on providing guidance rather than delivering training, both FOI practitioners and stakeholders would be interested in seeing the ICO create and facilitate training, as it is seen as an unbiased and more legitimate source of information than external training organisations. In terms of training content, respondents wanted training to be sector-specific, and to cover areas such as exemptions, case law updates, helping colleagues in non-FOI roles understand the requirements of the Freedom of Information Act 2002, and the ICO's own processes.

*“While the law is clear in many ways, there are parts of the legislation that are open to interpretation. If we're being held accountable by the ICO, it would be good to know what they want.”*

### Justice Sector, less than 1 year FOI experience

Sector-specific training was requested due to the different nature of requests that different sectors receive, as well as different internal ways of working. For example, education providers were particularly interested in understanding exemptions around safeguarding. Some practitioners highlighted their frustrations at external training having large sections that were irrelevant to them and would have appreciated a more focused approach.

*“Maybe half the exemptions are available to us, but the other half don't apply to us just because of the nature of our work, our business.”*

### Health Sector, more than 5 years FOI experience (1)

FOI practitioners wanted more help with the use of exemptions, especially in how to interpret them and in which situations they should be applied. Most exemptions are only applicable in specific situations and officers felt unsure about using them, and some felt that the training they had did not go into enough detail about this. In particular, officers would like more help in knowing how to apply the exemption for commercial interests, such as in a “domino effect” situation, where multiple pieces of information released separately can reveal too much about commercially sensitive information when combined. They also expressed interest in having clearer specifications on which requests can be considered vexatious. Some officers were also unaware of all the exemptions that exist, as reflected in findings from the stakeholder interviews that those from smaller public bodies were often likely to only receive limited training on FOI processes. Interviews with stakeholders highlighted a perception that these officers were more likely to apply exemptions improperly or misinterpret the rules due to a lack of knowledge, especially when faced with more complex requests. Therefore, training on the use of exemptions would be valuable.

Some respondents also felt that training should cover the differences when case law is updated as they struggled with identifying which sections had changed, and they wanted to feel more confident that they were using the legislation correctly.

To address delays in responses, practitioners felt it would be helpful to have training on how to inform their colleagues in different departments about the requirements of the FOIA. These colleagues are often tasked with collecting requested information and often lack an understanding of the importance

of such requests; as mentioned in Chapter 4, this lack of knowledge can lead to pushbacks or delays and negatively impacts compliance.

Finally, some practitioners also expressed interest in having training run by the ICO on their own processes. They felt that this would help them to better understand the ICO's approach. In particular, there was interest in how the ICO reaches decisions on FOI requests they themselves receive, what the thresholds are for accepting complaints for FOI or EIR, and how the ICO reaches decisions on reviews. This would allow them to apply the ICO's own approach to their responses and align better with the ICO.

**Suggestions for additional tools or guidance the ICO could provide:**

- L. The ICO could consider developing its own training courses. The most critical areas the ICO could cover are sector-specific content, training on exemptions, training to help improve organisational approaches to FOI, and training on the ICO's own approach and FOI processes.

Certain training formats were mentioned as being potentially useful. Some practitioners preferred bitesize training which would break down what can be perceived to be complicated legislation. This format would also reduce the time burden on trainees who are less able to take time to attend training during the workday and can only do so after work, or while they carry out other duties. Face-to-face training was also a popular format. This was seen as more engaging, and practitioners felt they would learn more this way compared to online training.

**Suggestions for additional tools or guidance the ICO could provide:**

- M. Develop online bitesize training sessions and/or face-to-face sessions, so that content is engaging.

## Guidance

Of those that took part in the research, most relied on ICO's guidance in their roles, which they found helpful for the most part. However, there were multiple suggestions for both the format of the guidance and additional forms of guidance that the ICO could produce.

Firstly, some respondents said that they struggled to read the guidance, because of its length and complexity. Some guidance documents were up to 40 pages long and contained examples which were not relevant. This made it difficult for officers to get through the guidance efficiently and find what they needed.

*"It can be a weighty read but maybe that is the nature of the beast."*

**Health Sector, 4-5 years FOI experience (2)**

Practitioners felt that it would be useful if the ICO could include summaries of the FOIA and its requirements, and guidance on the exemptions available for public bodies and how to properly apply those exemptions. They also suggested that it would be helpful if the guidance was made more engaging, such as including visual content like videos or graphics, which would help to encourage their use.

Some also felt that the guidance contained many legal terms that FOI practitioners, who usually do not have legal backgrounds, would not be familiar with. This was more often an issue for those newer to the field, as more experienced practitioners would have become familiar with them over time. However, it would be useful for the ICO to either simplify the language used in the guidance or include glossaries in guidance documents to clarify legal terms that were used.

*“I still normally do a Google search rather than go on the [ICO website] ... they also need to put more things in layman’s terms ... just pointing to the guidance doesn’t help apply things in real terms, so having lots of examples [helps].”*

#### **Central Government, less than 1 year FOI experience (2)**

A common sentiment was that it would be helpful if guidance documents reflected updates from case law or ICO decision notices, so that all the information relating to a particular exemption was collated in a single place. This is something that the ICO has started doing already and so is something to continue. Practitioners and stakeholders felt that the guidance should also distinguish between areas that are the ICO’s interpretation versus binding case law, and new updates should be clearly marked so users are able to identify the changes more quickly. Finally, a stakeholder also mentioned that some practitioners might not be aware when guidance has been updated, highlighting the need for communicating updates more widely.

*“They could update all of the guidance, including the EIR guidance. Each exemption has guidance, and there a lot of caveats...there are ICO decision notices and tribunal decisions that impact on that guidance, and it hasn’t been updated.”*

#### **Local Government, more than 5 years FOI experience (4)**

FOI practitioners also mentioned some additional guidance materials that would help them to consolidate their knowledge of the FOI process and make processes more efficient. This included introducing guidance on tribunal decisions and how practitioners can apply that to their own review decisions, highlighting significant decision notices which organisations can use as precedence for their own decisions, and developing additional ‘action plan’ tools, emulating the format of the ‘self-assessment toolkit’ which was seen to be an effective tool.

*“[It] would be helpful if the ICO can better distinguish its views and interpretations of terms, exemptions or the law, and things that are settled in case law and binding. I think their guidance is sometimes quite dogmatic with their view on something.”*

**Education Sector, more than 5 years FOI experience (4)****Suggestions for additional tools or guidance the ICO could provide:**

- N. Create summaries on guidance documents that would allow practitioners to quickly understand if that document is relevant to what they are looking for, as well as adding graphics to make the content more engaging.
- O. Use simpler language or include glossaries in guidance documents to clarify any legal terms used.
- P. Continue to update guidance to include changes made due to case law, and having clear communications when guidance has been updated or superseded, so that practitioners can be sure they are following the most up to date guidance.
- Q. Consider publishing guidance on tribunal decisions, examples of significant decision notices, and more 'action plan' tools, similar to the self-assessment toolkit which already exists, to help FOI practitioner understanding.

**Helpline**

More could be done to improve the awareness and quality of the ICO's helpline. While some respondents mentioned they had used the helpline, others, including some with more than 5 years FOI experience, suggested that the existence of one would be useful, indicating they had not heard of it.

*"Having an advice line [would be good] so we could check that we're doing the right thing. We want our responses right the first time, we don't want to add to workloads by having to do internal reviews or having things go to the ICO as a complaint."*

**Health sector, 1-3 years FOI experience**

Those who had used the helpline sometimes found it was not very useful as the operator was not familiar with their specific situation and would only give generic advice that could also be found on the website. Respondents who called the helpline were looking for advice on interpreting certain guidance rather than wanting to know what guidance was available.

*"(They) weren't really able to give any advice on the ICO guidance. It was more or less reading out what I'd already spent ages reading through. The support needed perhaps need a bit of extra support in being able to interpret some of the guidance rather than just someone who can say there's guidance on our website."*

**Local Government, more than 5 years FOI experience (2)**

Some also found that the answers given by different operators were inconsistent, which led to confusion. For instance, one respondent had a query about using an exemption but received two completely different answers from different operators she spoke to. Another found that the advice

given by the helpline to disclose information went against the exemption for commercially sensitive information.

Respondents from Wales found the Welsh helpline more useful than the English one. An interviewee who had used both the helplines in England and Wales felt that helpline operators for the latter were much more experienced, with an in-depth understanding of the regulations and how they could help that public body, and thus gave more useful advice. FOI practitioners suggested better publicising and improving the helpline to provide tailored support to organisations depending on the nature of their request.

Another FOI practitioner also discussed a desire to have a live chat function tailored for FOI practitioners on the ICO website (as opposed to a general one for all members of the public) to answer their queries quickly, in part to help those public bodies navigate the website and wide range of available guidance.

*“There’s lots of written guidance on their website, but sometimes if you’re starting from scratch, it might be helpful to have somebody talk you through it.”*

**Education sector, more than 5 years FOI experience (1)**

**Suggestions for additional tools or guidance the ICO could provide:**

- R. The ICO could review its helpline service, with a view towards further developing the expertise of helpline operators, and the tailored advice they give to practitioners, using its Welsh helpline as a model.
- S. Increase awareness of the helpline among practitioners, perhaps through newsletters or other communications campaigns, and publicising it on the ICO website.
- T. Consider developing a live chat tailored to FOI practitioners so they can access advice quickly.

**ICO website navigation**

Some FOI practitioners struggled with navigating the ICO’s website. While some acknowledged that the organisation of the website had recently been improved, they felt more could still be done, especially around the decision notice database and the organisation of guidance.

Some respondents also mentioned that they found the website’s search function limited, which made it difficult to make very specific searches, such as on a particular exemption.

*“In some cases, I know the information’s there and I know what I want, but I just can’t find it by looking or searching, because sometimes it used to be a link within a document to a document with another link.”*

**Local Government, more than 5 years FOI experience (2)**

Some also struggled to find the most up to date guidance, as it was not indicated if specific guidance was outdated and had been superseded.

*“You can go through the decision notices and find ones from 2014 which contradict what the ICO are currently saying, so it's useful to know what the most up to date ones are.”*

#### **Central Government, less than 1 year FOI experience (1)**

Public bodies expressed a desire for an improved search capacity, such as a filter for current/recent notices, as this would reduce the time practitioners spent on searching the website for a particular piece of information. In order to fully understand current pain points and barriers users experience on the website, as well as ensure any changes made have fully addressed users' needs, the ICO could continue carrying out user testing with ICO practitioners.

#### **Suggestions for additional tools or guidance the ICO could provide:**

- U. Improve the navigability of their guidance documents and decision notice to reduce time burden on FOI practitioners and make it easier for them to find more specific information.
- V. Continue to conduct user-testing of the ICO website with FOI practitioners, to ensure that it is fulfilling their needs.

#### **Other tools or support the ICO could provide**

As mentioned in Chapter 3, many practitioners also discussed wanting ICO-hosted FOI events for practitioners to come together and discuss their experiences and share best practice; and to empower staff with less FOI experience, for example through networking/sharing opportunities, local forums, and conferences. This was especially favoured by practitioners from smaller organisations who were often the only ones working on FOI in their organisation, who wanted a stronger network of support for when they need help. The idea of a Freedom of Information Conference was also strongly supported by a stakeholder.

Additionally, whilst this is already provided by the ICO, some FOI practitioners were unaware that a database of previous decision notices across different topics existed to help FOI practitioners with complex sector-specific cases. One FOI practitioner who was aware of the database highlighted it as an effective piece of support that the ICO provides, so this would indicate that the potential solution would be to publicise the existing tool better.

*“It's useful, especially when you're dealing with a request on a certain topic, to go and see previous ICO approaches on that same topic.”*

#### **Central Government, less than 1 year FOI experience (1)**

Both practitioners and stakeholders expressed a desire for more proactive communication and engagement from the ICO, which included regular newsletters focussed on providing relevant updates. While the current newsletter was seen as useful, practitioners wanted newsletters

specifically focused on updates from case law, especially where it had an impact on guidance, and recent significant decisions. The newsletter could also be better publicised to ensure public bodies' FOI practitioners are aware of it.

*"The ICO is a party in all proceedings ... it would be interesting to hear the regulator's view on some case law ... as opposed to the views of lawyers and commentators."*

#### **Education Sector, more than 5 years FOI experience (4)**

As mentioned in Chapter 3, some practitioners and stakeholders felt it would be useful for the ICO to offer open-source database platforms that could be used by organisations to assist their management of, and responses to, FOI requests. This would eliminate the need for those organisations to invest in buying or developing such a platform and would bring some standardisation in how performance data could be collected across public bodies.

*"Having a database system is invaluable."*

#### **Health Sector, 4-5 years FOI experience**

It would also be useful for the ICO to provide a dashboard of performance data for FOI officers to use to determine how their organisation is performing against benchmarks for other public bodies, similar to the existing ICO dashboard on data security incidents. This would include indicators such as the number of requests made, the percentage of requests answered on time, the percentage of requests that required internal reviews, and the percentage of requests that were escalated to complaints.

#### **Suggestions for additional tools or guidance the ICO could provide:**

- W. Facilitate networking opportunities among FOI practitioners, complementing the networks that already exist. These networks would be places for practitioners to come together, disseminate and share knowledge and collectively problem solve.
- X. Further publicise the decision notice database to make more FOI practitioners aware of it.
- Y. Increase engagement with practitioners through having more regular newsletters and having an update-focused newsletter, as well as better publicising the existing newsletter.
- Z. Consider offering an open-source database platform that organisations can use to develop case management and FOI response systems. This would release time burden on FOI practitioners, as they would not have to spend time creating their own.
- AA. Develop a dashboard of aggregate performance data of public bodies to allow organisations to compare themselves against a benchmark.

## What organisations the ICO could work with and/or partner with on any tools / guidance / training

Stakeholders were asked what organisations would be the most useful for the ICO to work with on tools, guidance or training. It was suggested that the ICO could partner with training providers, civil society groups, and other public bodies. While interviewees did not mention any specific training providers, they felt that such groups could provide a base for training material which the ICO could improve on when developing their own tools and training. For instance, many organisations do conduct training on case law for practitioners and have already analysed many decision notices, which could be a source of knowledge the ICO could tap into. Stakeholders felt that a lot of good training and guidance from other organisations already exists, and it would streamline resources if this could be centralised. Civil society groups, like the Campaign for Freedom of Information, have a wealth of expertise surrounding the FOIA, and also deliver their own training, which could be useful in providing feedback on the development of guidance materials and training and improving their quality.

The ICO could also contact practitioners through the National Association of Data Protection and FOI Officers in order to get feedback on what kinds of training or guidance is needed and to review materials that are being developed; this could also be another avenue for publicising existing and new ICO resources. Finally, one stakeholder mentioned working with the Scottish ICO to share best practice and new materials, as they saw that the Scottish ICO had been working on improving the FOI processes of Scottish public authorities for a long time.

### **Suggestions for who the ICO could partner with in the develop of tools, training and guidance materials:**

BB. The ICO could consider working with training providers, civil society groups, and other public bodies to help develop and give feedback on new training or guidance material. Specific organisations mentioned as potential partners were: Campaign for Freedom of Information, the National Association of Data Protection and FOI Officers, and the Scottish ICO.



## 6 Inspiring Proactive Transparency

This chapter outlines the current approaches and views on the transparency levels of public bodies, evidence on whether publication reduces requests, and suggestions for how the ICO can inspire proactive transparency.

### Current approaches and views on transparency/publication

#### Publication schemes

There was a high level of awareness of publication schemes and what they contained amongst FOI practitioners. However, there was substantial variation amongst public bodies' approaches to what data was published across different topics and across public bodies themselves.

A number of public bodies chose to follow ICO guidance on what they are required to publish and published information predominantly to fulfil those requirements.

*"We publish everything that we're legally required to publish by the Access to Information Act."*

**Local Government, more than 5 years FOI experience (5)**

Other public bodies took a more proactive approach, with transparency as the wider objective, publishing as much as possible.

*"I think we publish literally everything; we're really good at making information readily available to the public."*

**Local Government, more than 5 years FOI experience (6)**

Public bodies with publication schemes that had high and/or increasing levels of content were driven by a desire to be transparent and to follow ICO guidelines on what to publish. A number of FOI practitioners reported that as much as proactive transparency was the end result as well as one of the driving forces, the desire to reduce workloads by identifying repeated requests and publishing data that would help to avoid further requests was at least as significant a motivator.

*"We could get 30 [requests] a month and we're going 'this is ridiculous to keep sending these to the service area', because although they produce it once they've still got to look at every single one that comes in, just to check that it isn't asking for something different."*

**Local Government, more than 5 years FOI experience (1)**

Public bodies with publication schemes that had lower levels of content were sometimes driven by concerns such as fears over the reputational damage of releasing sensitive or confidential information. FOI practitioners also discussed the risks of published content quickly going out of date (and being able to better manage this through the FOI process). This was also driven by those FOI practitioners' belief that proactive publication would not lead to reductions in the number of requests.

*“We don't necessarily try and offset FOI requests by publishing lots of stuff, because what happens then is there's a danger of that stuff going out of date.”*

**Local Government, more than 5 years FOI experience (5)**

One additional challenge raised by an FOI practitioner was the added cost of translation for Welsh public bodies that is required for all new publications, which can be significant for substantial documents and especially during a time where public bodies have faced increasing budgetary restrictions.

Whilst a number of FOI practitioners outlined how they undertake regular or continuous reviews of what data their organisation publishes and updating the publication scheme, stakeholders highlighted that the updating of publication schemes is not rigorous and varies significantly across public bodies. One stakeholder outlined how it can be seen as low priority and is not being systematically monitored, with elements that are not updated until someone complains to the public body.

A number of FOI practitioners and stakeholders highlighted concerns over the limited utility of publication schemes as a method of informing potential requesters of data published by the organisation. One FOI officer mentioned that usage data highlighted that they were effectively the only person using their organisation's publication scheme. Others thought that publication schemes were outdated; they had served a purpose when the FOIA was introduced, but the format is of very limited use now that search engines and website search functions have improved. These are now the main tools used by individuals looking for data from those public bodies. One stakeholder described how a public body's publication scheme will outline what data is published and then it was up to the individual to try and find that information on the public body's website and that individuals were far more likely to find the information using a search engine. Those stakeholders believe that the concept of publication schemes needs an overhaul to be brought in line with how modern information systems work.

*“My personal view is that the idea of having a publication scheme is outdated... If I'm looking for anything in our publication scheme, I can go into Google, type the type of information I want... and our web page comes up.”*

**Local Government, more than 5 years FOI experience (2)**

*“Nobody [in the general public] thinks of a publication scheme. People think of information they want and go to the website.”*

**Stakeholder (3)**

Additionally, one stakeholder highlighted what they believed was further evidence of the publication scheme's declining relevance as a method of communicating to potential requesters. They outlined how public bodies were investing less time in ensuring that new FOI staff were aware of their publication scheme. This stakeholder believed that new staff members recruited into FOI roles, who on a practical day to day basis just log FOI requests and responses, have very limited knowledge, if any, of their organisations' publication scheme. This was also related to the recruitment of FOI

officers within many public bodies being ad hoc and how few individuals have FOI experience before coming into the role.

### Any evidence on whether publication reduces requests

There were mixed views amongst FOI practitioners over whether increased transparency reduced the number of FOI requests received. There is evidence provided by FOI practitioners that proactive publishing reduces requests but, as some FOI practitioners were more sceptical of the impact of this, there is a need to tackle the issue of perception.

FOI practitioners who were sceptical of the impact of proactive publication held an assumption that people would not bother to look at the publication scheme before making a request, that requests will increase whether they publish data or not, and that many FOI requests require more nuanced data than what is publicly available. Both FOI practitioners and stakeholders highlighted that the need for more nuanced data was felt to be more prevalent across different types of public bodies and across different subject areas than others.

*“Though they might be about the same subjects or topics, they don’t necessarily ask the same things about them. So, we’re always bearing it in mind, but we don’t ever really find anything that we could proactively publish that we could then refer people to.”*

**Local Government, more than 5 years FOI experience (2)**

*“FOIs keep on coming anyway, no matter what we do or don’t publish.”*

**Health sector, more than 5 years FOI experience (2)**

Stakeholders largely supported the belief held by a number of FOI practitioners that proactive publication can reduce the volume of FOI requests public bodies receive. Beyond reducing the volume of FOI requests, FOI practitioners outlined how the publication of data can help to reduce the time taken for them to respond to requests as the information is more accessible to them and organised, it can reduce the resource requirements from service areas and more effectively handle requests, narrowing the data requested.

*“People think that actually it just encourages more requests, but [a London Council] did really successfully look carefully at what people are asking for, and published data that answered those requests and they have reduced the volume of requests quite significantly in those areas.”*

**Stakeholder (2)**

#### **Potential solutions to inspire proactive transparency**

CC. Build a greater evidence base of the benefits of proactive transparency, including any resulting reductions in requests, workloads or other benefits and provide additional guidance on those benefits to public bodies. This is with the aim of encouraging public bodies to proactively make more information public.

DD. The ICO could reassess their guidelines on the use of publication schemes to communicate to potential requesters the published data that is available to them. The guidelines could be updated to reflect the improved information systems available today and their impact on how potential requesters access published information. This is with the aim of making requesters more aware of what information they can already access and where they can find it before making a request.

## 7 Current picture of Compliance

This chapter outlines the current picture of compliance as outlined by FOI officers and stakeholders as well as the availability of compliance statistics, drawing upon the findings from the literature review conducted by IFF.

### Qualitative evidence on compliance

FOI practitioners that we spoke to were predominantly focused on responding to FOI requests within the 20-day statutory deadline, although it should be noted that this may not be reflective of public bodies as a whole and it may be that more compliant bodies were more likely to opt into this research.

Stakeholders perceived there to be much more variation in compliance across public bodies.

*“The really good ones are in high nineties [in terms of per cent of responses on time], then we get some in the training courses we run in the fifty to sixty per cents.”*

**Stakeholder (5)**

The picture was mixed across all public bodies over time and was also dependent on topic and the size of the organisation. There was poorer performance on topics where there was potential for reputational damage, and typically performance was better for those larger public bodies with more formalised processes, although that was not without exception.

*“Some public authorities have very experienced and committed practitioners who’ve achieved exceptional compliance, often with quite modest resources. And they’ve succeeded in embedding Freedom of Information and transparency as a part of core business. And they have low levels of internal reviews and very few complaints to the Information Commissioner’s Office. But other authorities it’s a completely different picture. Some don’t have a central core of expertise at all, and there’s less commitment to the legislation.”*

**Stakeholder (2)**

In addition to the importance of the topic of the request in determining the compliance of public bodies, one stakeholder outlined their belief that the compliance of public bodies with environmental information requests tends to be considerably poorer than that of FOI.

*“I still find a lot of organisations that don’t recognise EIR and aren’t applying those exemptions properly.”*

**Stakeholder (5)**

The compliance of public bodies was also felt to be dependent on the FOI officers themselves, the support they have within their organisations, the document management systems they have in place and most importantly down to the capacity of the FOI practitioners and service areas.

*“Some public authorities take ages to respond, some are quick. Some only respond quickly to topics they know they are doing better in.”*

**Stakeholder (3)**

One stakeholder provided an example where they had made a request for the same inspection reports to two different local authorities. One local authority sent the documents within 2 days, whilst the other prevaricated, requested multiple clarifications and did not send the identical document for a substantially longer amount of time, only sending it after the stakeholder complained. The stakeholder highlighted how this was emblematic of the extreme variability of FOI responses across public bodies that they had experienced.

Stakeholders highlighted that some public bodies are notoriously poor performing without showing signs of improvement, whilst others that have been performing poorly are improving their performance. The performance of public bodies was thought to be due not just to the efficiency and effectiveness of their processes, but also to how the public body, and senior leadership within it, view FOI requests in general.

*“We pick it up sometimes by noticing that the same authorities are making the same errors or being rebuked for the same failings by the ICO.”*

**Stakeholder (1)**

Stakeholders highlighted the importance of strong senior support or buy in for FOI practitioners, outlining how they have seen public bodies improve their performance over time but, after changes in leadership, begin to see poorer performance.

Stakeholders similarly highlighted that whilst some information on compliance does exist, given the limited nature of the available published data, there is currently no clear picture of public bodies' compliance outside of central government.

*“If [the] ICO wants us to give information like Scottish ICO, then we should be measuring the same data, but they don't collect the stats, so it doesn't matter that we all have our own data platforms, it's ridiculous!”*

**Stakeholder (5)**

Stakeholders had a perception that the level of compliance data published by public bodies may depend on a number of factors, including performance around responding to FOI requests, organisation size and senior buy in and/or support for publication.

*“We have statistics for central government; other public authorities are encouraged to publish their compliance statistics in accordance with the Section 45 Good Practice Code. But I'm not sure that many of them are.”*

**Stakeholder (2)**

There was a feeling that those performing the worst were less likely to publish information and without that data, it's difficult for the ICO to effectively identify and support those authorities.

*“There seemed to be a correlation: authorities that had worse compliance rates in terms of timeliness were less likely to publish the statistics.”*

**Stakeholder (2)**

## Quantitative evidence on compliance

As outlined in the literature review conducted as part of research and as seen in [Appendix E](#), there is a substantial knowledge gap when looking at the performance of public bodies in responding to FOI requests, particularly when compared with the substantial amount of information that exists on the compliance of central government departments. The data on central government compliance which is published quarterly and annually by the Cabinet Office includes statistics on FOI request volumes, response timeliness, request outcomes, use of exemptions and internal reviews.

The data that does exist is limited in terms of timeliness, availability, accessibility and completeness. The existing secondary evidence that is available has been collated through direct FOI requests and surveys of local government bodies, but this information is more than 3 years old and limited in its coverage across public bodies. This evidence base is predominantly focussed upon the compliance of local authorities. Data on the compliance of executive agencies, public bodies in the health and social care sector, such as NHS trusts, Clinical Commissioning Groups and individual GP practices, or public bodies operating in other sectors, is limited.

As part of this research, we collected publicly available data on the compliance of public bodies, typically through annual reports and webpages, but also through emailing FOI teams directly. Predominantly, public bodies have made only a small number of figures on their compliance publicly available, and these tend to be very limited in scope. In addition, there is a lack of consistency in how data is collected by public bodies, both across the timeframe the data represents and the frequency of collection, how responses are recorded, and what the categories of request outcomes represent. For instance, one public body published that they had answered all of the requests they received “promptly,” without clearly defining whether this was tied to the deadline of 20 working days. Additionally, whilst some information may be published by public bodies in their annual reports and use clearly defined terms for outcomes, it may in fact be incomplete with several data fields missing.

The data that is available, however, does support the themes outlined by stakeholders and paints a picture of compliance that has been very mixed over time and mixed across different public bodies, with significant ranges in the number of requests received, timeliness of responses and in response outcomes.

The table below provides an overview of FOI request response outcomes across different groups of public bodies identified through examination of annual reports, email requests and published statistics as part of the literature review. Given the small sample sizes these figures are not meant to be representative, but illustrate the differences between public bodies where data is available.

**Table 1: Overview of FOI request outcomes across public bodies (average within sector)**

	Full release (base size)	Some/partial released (base size)	None released (base size)	None held (base size)
Health & social care bodies	50% (n=6)	21% (n=6)	13% (n=4)	25% (n=4)
Local Authorities	63% (n=7)	12% (n=6)	7% (n=6)	17% (n=6)
Other public bodies	29% (n=5)	21% (n=5)	23% (n=4)	17% (n=5)

The average annual timeliness rate for responses, i.e., those responded to within the 20 working days deadline, was:

- 92% for health and social care public bodies (n=11), ranging from 82% to 100%;
- 89% for local authorities (n=16), ranging from 69% to 100%; and
- 94% for other public bodies (n=11), although this ranged from 70% to 100%.

The data collected from secondary sources as part of the literature review further supports the picture of mixed compliance across public bodies.

The ICO published a report<sup>1</sup> covering 12 months of performance data up to August 2020 for all police forces. This report outlined how:

- the timeliness rate varied from 71% at the beginning of the period and ending at 82%;
- 18 forces (39%) achieved an overall timeliness rate of 90% or greater.

Looking at the performance of local authorities in detail, a study examining the compliance of London local authorities found that three quarters of London councils (25/34) failed to meet the ICO's expectation that authorities should respond to at least 90% of requests on time<sup>2</sup>.

A wider report<sup>3</sup> looking at all local authorities in England, outlined how, in local government, compliance rates with the statutory 20-day deadline for reply were reported to be high, with isolated exceptions:

<sup>1</sup> Information Commissioner's Office. (2020). *Timeliness of responses to information access requests by police forces*.

<sup>2</sup> Campaign for Freedom of Information. (2019). *FOI Good Practice: A survey of London local authorities*.

<sup>3</sup> mySociety. (2019). *Freedom of Information in Local Government*.



- 8 (2%) councils reported 100% of replies fell inside the statutory deadline;
- 260 (80%) reported upwards of 80% of replies fell inside the statutory deadline; and
- 7 (2%) reported compliance rates below 50%.

In terms of the outcomes of the requests these authorities received:

- 5 (2%) councils reported 100% of requests were granted in full;
- 106 (43%) reported upwards of 80% of requests were granted in full; and
- 19 (8%) reported that fewer than half of requests were granted in full.

As outlined in [Appendix E](#), LG Inform, the local area benchmarking tool from the Local Government Association, which brings together a range of key performance data for authorities, holds no benchmarking data on Local Authorities FOI compliance.

**Potential solutions to limited data on compliance:**

- EE. Further encourage public bodies to publish compliance data and provide more networking opportunities for public bodies to better understand compliance across their peers.
- FF. Provision an open-source database platform for FOI request management, or set general standards for managing requests, that encourages the standardisation of compliance data collection to improve the ICO's overall picture of compliance and to create more efficient publication processes for public bodies. (Also see suggestion A).
- GG. The ICO could utilise its improved picture of compliance to better identify how prevalent compliance issues are and to better determine how to address them and which public bodies to focus on.
- HH. The ICO could work with the Local Government Association (LGA) to consider whether FOI data could be included as part of their local area benchmarking tool, LG Inform.

## 8 Conclusions

### Overall conclusions

There is significant variety in the processes set up by public bodies to handle FOI requests, some more formalised than others, but substantial examples of good practice exist.

There is similarly significant variety in the compliance of public bodies with FOI requests, although the picture of compliance remains unclear, severely limited by the lack of compliance data published by those public bodies, as well as in the consistency and completeness of the data that is published.

FOI practitioners can face significant challenges in effectively and efficiently responding to FOI requests, predominantly due to resource constraints, but exacerbated in some cases by low levels of knowledge of FOI requirements amongst staff, lack of senior buy in, and limited training, guidance, and tools available to FOI practitioners.

Training for FOI practitioners does exist, but it is limited in terms of the topics it covers, predominantly focussing upon obtaining a basic understanding of FOI requirements and available exemptions, rather than more detailed elements of case law and the application of exemptions in complicated requests. Additionally, training is not universally undertaken by FOI officers and the level of training they undergo varies significantly across public bodies.

The performance, challenges and training of public bodies tends to vary depending on their size, the processes they have in place and the senior support or buy in within those public bodies. Additionally, all of those elements of performance, challenges, and training change over time within individual public bodies. Compliance also tends to vary within and across public bodies depending on the performance of each organisation on the specific topic of an FOI request.

There is a considerable catalogue of guidance and materials developed by the ICO which is available to FOI practitioners, that both FOI practitioners and stakeholders have highlighted is of very high quality and utility. However, the use of these varies considerably and there are a number of ways to further improve the extent to which these resources are used.

### Potential solutions

There are numerous ways that the ICO could further support FOI practitioners, predominantly through the development of additional training, guidance and materials for FOI practitioners.

### Developing organisational tools

The ICO could help public bodies through developing templates, guidance or standards for organisational tools and FOI response databases that would encourage standardisation and enable performance data collection across public bodies, as well as increasing the efficiency of processes and therefore helping to mitigate against resourcing issues for FOI staff.

### **Additional guidance and training**

The ICO could offer additional basic training or guidance on the FOI process and the FOIA, specific training or guidance on exemptions, and changes to case law and their applications. The ICO could also provide guidance for requesters on how to write a comprehensive and coherent FOI request as well as to FOI practitioners on how to effectively engage and communicate with requesters to obtain a satisfactory outcome for all.

### **Updating current resources**

Current guidance or materials for FOI practitioners could be improved to reflect updates from case law and ICO decision notices, by having clear communications when guidance has been updated or superseded and through improvements to the navigability of their guidance documents, decision notice database and website. These improvements to the website navigation should help to increase awareness of the resources that are available; this could be increased further by publicising ICO resources through partner organisations and FOI networks.

### **Engagement**

The ICO could facilitate networking opportunities among FOI practitioners, complementing the networks that already exist; and consider organising forums or events for FOI practitioners to share best practice. The ICO could also improve its engagement with FOI practitioners through including additional content in existing newsletters and increasing their frequency.

## Appendix A: Full List of Areas Where Future Upstream Work Could Add Value

- A.** Look into developing and publishing organisational tools such as spreadsheets and response templates, which smaller organisations could use and tailor for their own practices. This would aid with the administration of the FOI process, and save organisations time and resource in developing their own materials.
- B.** Incorporate the suggestion of using internal deadlines, before the statutory deadline for issuing a response to an FOI request, into any related guidance that the ICO publishes. This could include suggested or example timelines. This would be with the aim of ensuring compliance with statutory FOI deadlines.
- C.** Encourage an amenable attitude and culture as part of your communications around FOI, in the hope that it is implemented by organisations. These communications should be especially targeted at senior leadership within organisations, as they are likely to be the key drivers of cultural change. This may be done by providing case studies of where having an amenable attitude has made the FOI process smoother.
- D.** Look into offering basic training or guidance on the FOI process and the FOIA for people who are completely new to FOI processes and/or do not deal with them very often, or are more peripheral to the process (e.g. part of the wider organisation). This is with the aim of making sure that everyone in an organisation, not just FOI practitioners, are aware of the FOI process and the importance of compliance.
- E.** Facilitate networking opportunities among FOI practitioners, complementing the networks that already exist. These networks or conferences would be places for practitioners to come together, disseminate and share knowledge and collectively problem solve.
- F.** Offer training on how to analyse and collate data more efficiently, to reduce time burden on FOI practitioners and reduce request refusals.
- G.** Signpost practitioners to relevant training on how to analyse and collate data more efficiently, and encourage uptake.
- H.** Offer more specific training/guidance on exemptions, where they apply and how to apply them. This increased knowledge, both on the part of FOI practitioners and others in the organisation, would hopefully reduce reluctance in releasing certain pieces of information, and therefore increase compliance with FOI.
- I.** Consider ways in which the ICO can support practitioners in issuing Section 14 responses, in order to reduce the number of repeat requests received. This could be through training, guidance and/or through their helpline.
- J.** Offer further guidance for requesters on how to write a comprehensive and coherent FOI request, to reduce FOI practitioner frustrations about not being able to clearly interpret the request.
- K.** In tandem with suggestion J, the ICO could consider publishing guidance for practitioners on how to effectively engage and communicate with requesters to obtain a satisfactory outcome for all (also see suggestion C).

- L.** The ICO could consider developing its own training courses. The most critical areas the ICO could cover are sector-specific content, training on exemptions, training to help improve organisational approaches to FOI, and training on the ICO's own approach and FOI processes.
- M.** Develop online bitesize training sessions and/or face-to-face sessions, so that content is engaging.
- N.** Create summaries on guidance documents that would allow practitioners to quickly understand if that document is relevant to what they are looking for, as well as adding graphics to make the content more engaging.
- O.** Use simpler language or include glossaries in guidance documents to clarify any legal terms used.
- P.** Continue to update guidance to include changes made due to case law, and having clear communications when guidance has been updated or superseded, so that practitioners can be sure they are following the most up to date guidance.
- Q.** Consider publishing guidance on tribunal decisions, examples of significant decision notices, and more 'action plan' tools, similar to the self-assessment toolkit which already exists, to help FOI practitioner understanding.
- R.** The ICO could review its helpline service, with a view towards further developing the expertise of helpline operators, and the tailored advice they give to practitioners, using its Welsh helpline as a model.
- S.** Increase awareness of the helpline among practitioners, perhaps through newsletters or other communications campaigns, and publicising it on the ICO website.
- T.** Consider developing a live chat tailored to FOI practitioners so they can access advice quickly.
- U.** Improve the navigability of their guidance documents and decision notice to reduce time burden on FOI practitioners and make it easier for them to find more specific information.
- V.** Continue to conduct user-testing of the ICO website with FOI practitioners, to ensure that it is fulfilling their needs.
- W.** Facilitate networking opportunities among FOI practitioners, complementing the networks that already exist. These networks would be places for practitioners to come together, disseminate and share knowledge and collectively problem solve.
- X.** Further publicise the decision notice database to make more FOI practitioners aware of it.
- Y.** Increase engagement with practitioners through having more regular newsletters and having an update-focused newsletter, as well as better publicising the existing newsletter.
- Z.** Consider offering an open-source database platform that organisations can use to develop case management and FOI response systems. This would release time burden on FOI practitioners, as they would not have to spend time creating their own.
- AA.** Develop a dashboard of aggregate performance data of public bodies to allow organisations to compare themselves against a benchmark.
- BB.** The ICO could consider working with training providers, civil society groups, and other public bodies to help develop and give feedback on new training or guidance material. Specific

organisations mentioned as potential partners were: Campaign for Freedom of Information, the National Association of Data Protection and FOI Officers, and the Scottish ICO.

**CC.** Build a greater evidence base of the benefits of proactive transparency, including any resulting reductions in requests, workloads or other benefits and provide additional guidance on those benefits to public bodies. This is with the aim of encouraging public bodies to proactively make more information public.

**DD.** The ICO could reassess their guidelines on the use of publication schemes to communicate to potential requesters the published data that is available to them. The guidelines could be updated to reflect the improved information systems available today and their impact on how potential requesters access published information. This is with the aim of making requesters more aware of what information they can already access and where they can find it before making a request.

**EE.** Further encourage public bodies to publish compliance data and provide more networking opportunities for public bodies to better understand compliance across their peers.

**FF.** Provision an open-source database platform for FOI request management, or set general standards for managing requests, that encourages the standardisation of compliance data collection to improve the ICO's overall picture of compliance and to create more efficient publication processes for public bodies. (Also see suggestion A).

**GG.** The ICO could utilise its improved picture of compliance to better identify how prevalent compliance issues are and to better determine how to address them and which public bodies to focus on.

**HH.** The ICO could work with the Local Government Association (LGA) to consider whether FOI data could be included as part of their local area benchmarking tool, LG Inform.

## Appendix B: Profile of Practitioners that Took Part in Research

Participants were purposively selected (using a screening questionnaire) to achieve agreed quotas. Due to the low number of participants, the overall findings are not necessarily representative of all public bodies as a whole.

The profile of FOI practitioners that took part in research and the sectors they work in is as follows:

<b>Sector</b>	<b>Quotas/Sub-quotas</b>
Central Government	<b>Total: 4</b>
Local Government	<b>Total: 10</b>
Health	<b>Total: 6</b>
	<i>Hospitals: 4 (min quota 1)</i>
Justice	<b>Total: 5</b>
	<i>Police Forces: 4 (min quota 1)</i>
	<i>Other bodies: 1 (min quota 1)</i>
Education	<b>Total: 5/5</b>
	<i>Further and Higher Education 3 (min quota 1)</i>
	<i>Secondary Schools: 1 (min quota 1)</i>
	<i>Primary Schools: 1 (min quota 1)</i>

Interviews were conducted with 5 stakeholders, listed below. One stakeholder did not wish to be identified, so they are not listed. Stakeholder quotations are not attributed to retain confidentiality.

Maurice Frankel – Director of Campaign for Freedom of Information

Katherine Gundersen – Deputy Director of Campaign for Freedom of Information

Martin Rosenbaum – Freedom of Information consultant

Lynn Wyeth – Head of Information Governance and Data Protection Officer for a large unitary local authority, with 17 years' experience of Freedom of Information and Data Protection; Digital Officer for the National Association of Data Protection and Freedom of Information Officers

## Appendix C: Topic Guide for FOI Practitioner Interviews

### B Respondent and Organisational Background [5 mins]

First, I'd like to start off by learning a little bit about your role and the organisation you work for.

#### B1 Can you tell me a little bit about your role and the place you work?

- SPONTANEOUS, THEN PROBE AROUND:
  - Length of time in role
  - Day-to-day responsibilities
  - Any similar previous jobs
  - Size of organisation
  - Organisational structure (e.g. whether school is part of academy trust, hospital is part of hospital trust, etc.)

#### B2 What is your experience of working with Freedom of Information (FOI) requests?

*INTERVIEWER TO REFER BACK TO INFORMATION GATHERED IN OPT-IN/SCREENER:*

- *HOW LONG THEY'VE BEEN DEALING WITH FOI REQUESTS*
- *WHETHER THEY'VE DEALT WITH FOI REQUEST IN THE LAST 12 MONTHS*
  
- SPONTANEOUS, THEN PROBE AROUND:
  - Whether they are solely or jointly responsible for dealing with FOI requests
  - How often they have to deal with FOI requests
  - How confident they feel in dealing with FOI requests
    - If not confident, reasons for this

### C Current Practice around FOI Requests [12 mins]



**C1 What sort of topics do you see FOI requests for?**

- SPONTANEOUS, THEN PROBE AROUND:
  - What topics are the most commonly asked about

**C2 Could you talk me through the process of what normally happens when your organisation receives a FOI request?**

- SPONTANEOUS, THEN PROBE AROUND:
  - Whether the process is formally written down as guidance
  - Who has responsibility for finding the information and/or responding, whether these are different people
  - Whether these timelines for responding follow the FOIA/EIR or whether they differ
  - Whether timelines differ dependent on resource

**C3 Are you aware of your organisation's publication scheme?**

*IF NECESSARY: THE FREEDOM OF INFORMATION ACT 2000 (FOI ACT) REQUIRES PUBLIC AUTHORITIES TO ADOPT AND MAINTAIN A PUBLICATION SCHEME, THE PURPOSE OF WHICH IS TO:*

- *SPECIFY THE CLASSES OF INFORMATION YOU HAVE COMMITTED TO PUBLISH*
- *SAY HOW YOU WILL MAKE THAT INFORMATION AVAILABLE*
- *SAY WHETHER THE INFORMATION IS AVAILABLE FREE OF CHARGE OR ON PAYMENT*
- IF AWARE, ALLOW SPONTANEOUS COMMENTS, THEN PROBE AROUND:
  - What sorts of information they do/don't publish and why
    - PROBE:
      - DO: To promote transparency
      - DO: Hope of reducing number of FOI requests received
      - DON'T: Concerns about reputation
      - DON'T: Concerned about increased FOI requests
  - How long this scheme has been in place/any changes to proactive publication and why

**C4 Have you ever made changes to how much information your organisation proactively publishes?**

- IF YES, PROBE:
  - When
  - How it changed
  - Whether they saw any increase/decrease in number of FOI requests received after the change
- IF NO, PROBE:
  - What impact they think increasing the amount of information they proactively publish would have on the number of FOI requests they receive (would number increase or decrease)

**C5 Do you/your organisation face any difficulties in responding to FOI requests? If so, what are these?**

- PROBE AROUND:
  - Lack of knowledge/understanding (e.g. around regulations, what process to follow, etc.)
  - Lack of resource
  - Perception of the importance of complying with regulations
  - For each of above, how does it affect response (e.g. in terms of time taken, information given, etc.)?

**C6 IF DIFFICULTIES MENTIONED: How do you think these difficulties could be overcome?**  
*DO NOT PROBE AROUND ANY MENTION OF PROBLEMS WITH REGULATIONS*

- SPONTANEOUS, THEN PROBE:
  - Anything that would make their life easier

## D Training, Guidance Materials and Tools [8-12 mins]

I now want to talk about your use of any training, guidance materials or tools around the Freedom of Information process.

**D1 Have you ever received any training on the FOI process or the regulations around it?**

- PROBE AROUND:

- Whether training was formal or informal
- Whether training was internal or external
  - IF EXTERNAL: Who delivered the training (ASK AND RECORD NAME)
- What was covered
- What was useful
- Anything they thought was missing/could have been better about the training
- IF NOT RECEIVED TRAINING, PROBE AROUND:
  - How they've been familiarised/familiarised themselves with the FOI process and regulations
  - What training they would like to have received, if any, and why

D2 **Have you ever used any guidance materials and/or tools around the FOI process or the regulations around it?**

- PROBE AROUND:
  - What sort of material this was (e.g. online documents/videos, paper copies, posters in workplace, etc.)
  - Who this material came from (*PROBE FOR MATERIALS THEY'VE USED FROM ICO, IF NOT ICO THEN ASK FOR NAME*)A
  - What was covered
  - What was useful
  - Anything they thought was missing/could have been better about the guidance materials/tools
- IF NOT USED GUIDANCE MATERIALS/TOOLS, PROBE AROUND:
  - (*IF NOT COVERED ABOVE*): How they've been familiarised/familiarised themselves with the FOI process and regulations
  - Whether they were aware of any guidance materials or tools
    - IF YES: Why they chose not to use/follow it
  - What materials/tools they would like to have received, if any, and why

D3 **IF NOT COVERED ABOVE: Have you ever used any guidance materials and/or tools around the FOI process from the ICO?**

- IF YES, PROBE AROUND:
  - Whether this was the material that has recently been published?

*INTERVIEWER NOTE: THIS MAY INCLUDE THE [SELF-ASSESSMENT TOOLKIT \(2021\)](#) AND [‘TRAINING RESOURCES FOR YOUR BUSINESS’ \(2022\)](#)*

- What sort of material this was
- When they were used
- What was covered
- What was useful
- Anything they thought was missing/could have been better about the guidance materials/tools
- IF NO, PROBE AROUND:
  - Whether they knew that the ICO produced guidance materials and tools

D4 **The ICO would like to provide better support to organisations to help them handle Freedom of Information requests. In your opinion, what sort of resources could the ICO offer to make sure that organisations like yours are understanding and complying with regulations?**

- SPONTANEOUS, THEN PROBE AROUND:
  - What types of information would be useful (e.g. regulation summaries, ‘how-to’ guides)
  - What formats would be most useful (e.g. online resources, paper handbooks, face-to-face training, etc.)
  - How this/these would help their organisation

## E Good Practice [5-9 mins]

E1 **How could other organisations learn from the way that your organisation deals with FOI requests?**

- SPONTANEOUS, THEN PROBE AROUND:
  - Any examples of good practice
  - Use of internal protocols/guidance
  - How seriously a request is taken/perceived compliance with FOIA/EIR
  - Timeliness of response

E2 **Thinking back across everything we've discussed, in your opinion, what is the main thing that the ICO could do to help you handle FOI requests?**

- SPONTANEOUS, THEN PROBE:
  - Guidance/tools/training
  - Anything else – e.g. increased comms, engagement with senior leaders of organisations, etc.

## F Close [3 mins]

F1 **Do you have any other feedback which you think might be useful for the ICO to hear?**

F2 **Is there anything else you'd like to say that you haven't had the chance to mention yet?**

## Appendix D: Topic Guide for Stakeholder Interviews

### B Respondent and Organisational Background [10 mins]

First, I'd like to start off by learning a little bit about your role and the organisation you work for.

**B1 Can you tell me a little bit about your role and the place you work?**

- SPONTANEOUS, THEN PROBE AROUND:
  - Length of time in role
  - Day-to-day responsibilities
  - Any similar previous jobs
  - Size of organisation
  - Organisational structure (*e.g. whether school is part of academy trust, hospital is part of hospital trust, organisations the expert bodies represent etc.*)

**B2 What is the role of your organisation in the FOI space?**

- SPONTANEOUS, THEN PROBE AROUND:
  - Does your organisation support public sector organisations and/or members of the public with compliance, campaigning / lobbying, producing data or in other ways?
- *IF NECESSARY: THESE COULD INCLUDE LOCAL GOVERNMENT INSTITUTIONS, NHS ORGANISATIONS, UNIVERSITIES, GOVERNMENT AGENCIES, REGULATORS AND OTHER SIMILAR ORGANISATIONS*

**B3 How familiar are you with the extent to which organisations are compliant with FOI requests?**

- SPONTANEOUS, THEN PROBE AROUND:
  - Are there public sector organisations or sectors that you are more confident discussing?
  - Are there any organisations or sectors that you are less familiar with?

*INTERVIEWER TO ADJUST THE FOLLOWING QUESTIONS TO FIT WITH BACKGROUND INFO GIVEN*

## **C Current picture of compliance with FOI Requests [12 mins]**

**C1 To what extent do you believe public sector organisations are effectively handling FOI requests?**

- SPONTANEOUS, THEN PROBE AROUND:
  - What areas of the FOI process do you think public sector organisations are doing most effectively?

**C2 Are there any areas where you believe public sector organisations face difficulties in responding to FOI requests? If so, what are these?**

- PROBE AROUND:
  - Lack of knowledge/understanding (e.g. around regulations, what process to follow, etc.)
  - Lack of resource
  - Perception of the importance of complying with regulations
  - For each of above, how does it affect response (e.g. in terms of time taken, information given, etc.)?

**C3 To what extent do you believe public sector organisations are responding to FOI requests within the statutory deadline (20 working days)?**

- PROBE AROUND:
  - Are there any common characteristics for those sectors or organisations that are more effective?
  - Are there any common characteristics for those sectors or organisations that are less effective?

**C4 To what extent do you believe public sector organisations are effectively handling the internal review of FOIA requests?**

- PROBE AROUND:

- Are there any common characteristics for those sectors or organisations that are more effective?
- Are there any common characteristics for those sectors or organisations that are less effective?
- Where grounds to exist, are these organisations effectively overturning decisions?
- Are the outcomes of these reviews effectively communicated to those individuals requesting them?

**C5 To what extent are public sector organisations completing FOI internal reviews within the timeframe outlined in the ICO's Freedom of Information Code of Practice (20 working days)?**

**C6 In your experience / understanding, do public sector organisations (or FOI staff) you have worked / dealt with have written processes for handling FOI requests? Are these processes sufficient?**

## **D Public sector organisations' FOI processes (5 mins)**

**D1 In your opinion, what are the main barriers encountered by individuals making FOI requests?**

**D2 To what extent do you think a clear picture exists on the compliance of public sector organisations, outside of central government, with FOI requests?**

● SPONTANEOUS, THEN PROBE AROUND:

- Are there any points of data that are more difficult to obtain/are less likely to be released by public sector organisations?
- Are there any organisations that hold FOI compliance data across multiple public sector organisations? If so, who are these organisations?

**D3 In your opinion, to what extent do you believe public sector organisations have effective publication schemes?**

● SPONTANEOUS, THEN PROBE AROUND:

- What sorts of information organisations do/don't publish and why



- PROBE:
  - DO: To promote transparency
  - DO: Hope of reducing number of FOI requests received
  - DON'T: Concerns about reputation
  - DON'T: Concerned about increased FOI requests

## E Training, Guidance Materials and Tools [12 mins]

I now want to talk about the existence and use of training, guidance materials or tools around the Freedom of Information process by public sector organisations.

**E1 In your opinion, do public sector employees responsible for responding to requests typically receive any training on the FOI process or the regulations around it?**

- PROBE AROUND:
  - Whether this training is formal or informal
  - Whether training is internal or external
    - IF EXTERNAL: What organisations are providing the most effective support?
  - What is covered during the training
  - Does this vary across the organisations/sectors you are familiar with?

ASK TRAINING PROVIDERS ONLY

**E2 Can you outline to me the topics you typically cover in the training that you provide public sector organisations?**

- PROBE AROUND:
  - What type of FOI training is most in demand?

**E3 From your perspective, what additional training for public sector employees would be of most benefit, and is missing from the training they typically receive?**

- PROBE AROUND:
  - What sort of additional training would this include?

- Are there any organisations that you think most effectively provide the additional training you are discussing?
- Does this vary across the organisations/sectors you are familiar with?

E4 **As far as you are aware, to what extent do public sector employees effectively use existing guidance materials and/or tools around the FOI process or the regulations around it?**

- PROBE AROUND:
  - What sort of material do they use (e.g. online documents/videos, paper copies, posters in workplace, etc.)
  - Who this material came from and what it typically covers
  - Does this vary across the organisations/sectors you are familiar with?

E5 **In your opinion, what additional guidance materials/tools for public sector employees would be of most benefit, and is missing from the guidance materials/tools they typically receive?**

- PROBE AROUND:
  - What sort of guidance material/tools would this include?
  - Are there any organisations that you think most effectively provide these guidance materials/tools?
  - Does this vary across the organisations/sectors you are familiar with?

E6 **The ICO would like to provide better support to organisations to help them handle Freedom of Information requests. Have you, or your organisation, ever worked or communicated with the ICO about FOI guidance or training materials?**

- PROBE AROUND:
  - If not, is this something that you would consider doing in the future?
  - Are there any other organisations in the FOI space that you believe the ICO should be building relationships with?

E7 **In your opinion, what sort of resources could the ICO offer to make sure that public sector organisations are understanding and complying with regulations?**

- PROBE AROUND:
  - What guidance materials/tools provided by the ICO do you believe are most effective?
  - What additional types of information would be useful (e.g. regulation summaries, 'how-to' guides)?
  - What formats would be most useful (e.g. online resources, paper handbooks, face-to-face training, etc.)?
  - How this/these would help public sector organisations?
  - Does this vary across the organisations/sectors you are familiar with?

## F Close [2 mins]

F1 **Do you have any other feedback which you think might be useful for the ICO to hear?**

F2 **Is there anything else you'd like to say that you haven't had the chance to mention yet?**

## Appendix E: Literature Review

### Objective of the research

A key objective of this research, which we will be focussing on in the literature review, was to determine the picture of compliance with the FOIA and EIR, outside of central government, where good statistical evidence already exists. In order to address this objective we conducted a data landscape audit.

### Overview of sources

This data landscape audit involved looking for all possible sources of information that will help to address this objective. Whilst there is limited information available, we identified a number of sources to pursue including:

- A small number of academic papers and research reports;
- Annual reports or data published on websites or disclosure logs from local authorities, NHS Trusts and other public bodies; and
- For cases where we have not been able to locate FOI performance data online, emailing FOI teams directly (using public FOI request email addresses) to determine whether published FOI performance data for their organisation exists. Some treated the request as a formal FOI request and responded as such.

We have utilised all of these sources to build the picture of compliance and identify where there are gaps in the data. This report provides a high-level summary of compliance across public bodies using the academic papers and research reports. An accompanying excel spreadsheet has been provided with the available individual organisation level data collected as part of the literature review.

### Public bodies' FOI performance

#### Secondary evidence collected as part of the research

Whilst reports by the Cabinet Office on central government departments FOI performance provided the most up to date information on FOI compliance (The Cabinet Office, 2010-2022), this information is not readily available across other public bodies. Out of 111 public bodies searched as part of this literature review, only 45 published any FOI performance data. These reports were also published in different places on those authorities' websites. Some public bodies published FOI statistics in their annual report, but others included them as part of a separate data publication, or simply published them as standalone reports. For instance, Bolton Council published FOI statistics through a corporate dashboard that monitored a suite of council-related data, Cambridge City Council included FOI data in an Annual Information Governance report, and Cotswold District Council had a standalone report on "Freedom of Information Performance Statistics" published on its Freedom of Information webpage. Councils differed in the time periods used to record statistics. Some reported across calendar years

while others reported across financial years. Also, some statistics were released annually while others were released quarterly.

Where public bodies had published FOI performance data, the reports also varied vastly in the quantities and categories of information provided. Most authorities published how many FOI requests they received and how many (either the number or percentage) were responded to on time. Some only published these. Other common categories of data published were the number of requests where information sought was released in full, partially released, not held, exempted from publication, or required an internal review. However, only a small group of these authorities shared details on the outcome of these reviews – if decision were wholly upheld, partially upheld, or substituted.

The available data indicates that public bodies have largely seen an increase on FOI requests year on year, however this increase tends to be modest and often public bodies experience annual spikes in specific years. The average change across the 20 public bodies where data was available was a 3% increase year on year, but this ranged from a 30% decrease to a 30% increase.

Additionally, public bodies are largely responding to FOI requests on time, however the available data does not indicate whether this corresponds to the 20 working days timeline or includes extensions to that time limit; therefore, those FOI requests marked as responded to within the timeline may in fact have taken significantly longer than 20 working days. For the 38 public bodies where this information was available, the average percentage of FOI requests responded to on time was 91% and ranged from 69% to 100% across those public bodies.

Lastly, public bodies that release data on the number of internal reviews they undertake often review a very small percentage of total FOI requests. For the 19 public bodies where this information was available, the average percentage of FOI requests sent for internal review was 2%.

In terms of the outcome of requests, we can see that:

- For the 18 public bodies where we have data, 54% of requests resulted in a full release of the data by those public bodies;
- For the 14 public bodies where we have data, 8% of requests resulted in no data released by those public bodies;
- For the 17 public bodies where we have data, 18% of requests resulted in some/partial data released by those public bodies; and
- For the 15 public bodies where we have data, 19% of requests were refused because of no data held by those public bodies.

Breaking this down across different public bodies, where annual data was reported we can see that the average number of requests received annually was:

- 398 for health and social care public bodies, such as CCG's or NHS Trusts, ranging from 148 to 812;
- 1,111 for local authorities, ranging from 525 to 2,772; and
- 366 for other public bodies, such as executive agencies, Transport for London, Visit Britain and others, ranging from 31 to 2,771.

The annual figures for those public bodies reporting on a quarterly basis have been derived by applying the same quarterly rate across the entire year. However, this is unlikely to be entirely accurate given the changes across available quarterly data of other public bodies. Additionally, the figures published by the National Police Chiefs' Council (NPCC) have been excluded from the calculation of the average number of requests received annually as they represent the FOI requests to all police forces rather than a single public body.

The average annual timeliness rate for responses, i.e. those responded to within the 20 working days deadline, was:

- 92% for health and social care public bodies, ranging from 82% to 100%;
- 89% for local authorities, ranging from 69% to 100%; and
- 94% for other public bodies, although this ranged from 70% to 100%.

The table below provides an overview of FOI request response outcomes across different groups of public bodies.

**Table 2: Overview of FOI request outcomes across public bodies**

	Full release (base size)	Some/partial released (base size)	None released (base size)	None held (base size)
Health & social care public bodies	50% (n=6)	21% (n=6)	13% (n=4)	25% (n=4)
Local Authorities	63% (n=7)	12% (n=6)	7% (n=6)	17% (n=6)
Other public bodies	29% (n=5)	21% (n=5)	23% (n=4)	17% (n=5)

However, given the small sample size these figures are not meant to be representative but rather to illustrate the differences amongst groups of public bodies using the available data.

## Existing evidence on compliance identified in the literature review

### ICO report on the timeliness of responses to information access requests by police forces in England, Wales and Northern Ireland

The ICO report on the timeliness of responses of police forces (Information Commissioners Officer, 2020) aimed in part to provide insight into compliance with the statutory time for responding to information access requests in the police sector in England, Wales and Northern Ireland.

In the 12 months that the data was collected, the police received approximately 53,000 FOI requests. Based on the data the police provided, 74% of subject access requests (SAR) and FOI requests were completed within the required timescales.

This report did not cover all aspects of data protection or freedom of information and was limited to addressing the timeliness of responses to subject access and freedom of information requests made to police forces.

The analysis in this report covered 12 months of data up to August 2020 and outlined how:

- During the monitored period (Sept 2019 – Aug 2020) the timeliness rate showed an increasing trend, starting at 71% and ending at 82%;
- 18 forces (39%) achieved an overall timeliness rate of 90% or greater;
- The number of overdue requests reduced from 7,393 to 3,750 during that time, a 49% reduction;
- Between September 2019 and August 2020 approximately 87,000 requests were received by the police. During the same period the police closed almost 90,000 requests, around 3,000 more than received.
- The number of cases in the 'pipeline' decreased by 28%. Given that average volumes received were consistent prior to lockdown, this suggested an overall improvement in performance during this period; and
- During the lockdown period there was a slight reduction in the volumes of information access requests closed. However, the police were able to reduce the percentage of the overdue requests from 56% in March 2020 to 43% in August 2020.

### Freedom of Information in Local Government

A 2019 report (mySociety, 2019) on Freedom of Information in Local Government was released by mySociety, a UK-registered charity with the aim of making online democracy tools for UK citizens.

The key conclusions of the research relevant to this literature review were that in local government, compliance rates with the statutory 20 days deadline for reply were reported to be high, with isolated exceptions:

- 8 (2%) councils reported 100% of replies fell inside the statutory deadline;
- 260 (80%) reported upwards of 80% of replies fell inside the statutory deadline; and
- 7 (2%) reported compliance rates below 50%.

While the Institute for Government has reported a growing trend of refusals in Central Government (Institute for Government, 2018), approaching 40% withheld in 2017, the picture in Local Government was thought to be generally more positive where:

- 5 (2%) councils reported 100% of requests were granted in full;
- 106 (43%) reported upwards of 80% of requests were granted in full; and
- 19 (8%) reported that fewer than half of requests were granted in full.

Complaints by requesters were generally uncommon, but most councils dealt with at least one in this time period. Breaking this further:

- 305 (94%) councils had at least one internal review;
- 217 (67%) councils had more than five;
- 208 (81%) councils had cases where the original decision was overturned; and
- 183 (64%) councils had at least one complaint to the ICO;
- 44 (15%) councils had more than five;
- On average 1.4% requests were appealed to Internal Review; and
- Of all tracked internal reviews, in 51-64% of cases the original decision was upheld in full.

### *Campaign for Freedom of Information*

A 2019 report written by the Campaign for Freedom of Information (Campaign for Freedom of Information, 2019) examines the extent to which London Councils are following good practice in complying with the Freedom of Information (FOI) Act. It was based on an examination of the councils' own FOI policies, guidance, performance reports and statistics, the handling of FOI requests made by the authors and a review of relevant Information Commissioner (IC) decisions. Although the specific data relates to London Local Authorities the authors outlined a belief that the research findings represented the common view of all public bodies and that the recommendations were of wider



relevance. The research covered London's 32 Borough Councils, the City of London Corporation and the Greater London Authority.

The collated responses indicated that:

- 6/34 authorities recorded information on a calendar year basis rather than financial year. One was unable to provide this (no reason stated), one recorded it in irregular periods (13 months), and one included subject access requests in its count;
- There was an inconsistent definition of "on time." 22 (2/3) of the councils defined it as within 20 working days, while the remaining 1/3 included requests answered within a permitted extension;
- Some councils did not record how long it took for delayed responses to be made (2 days vs 200 days – big difference);
- The overwhelming majority of London councils (31/34) published no statistics on the time they take for internal reviews;
- 2/34 councils did not produce performance monitoring reports;
- 11/34 did not publish any kind of FOI statistics, most London councils (22/34) published the percentage of requests they answered within the statutory time limit;
- 30 of the 34 councils failed to reveal the numbers of requests they answered or refused, half did not publish the number of FOI requests received;
- 4/34 published how long their internal reviews take; and
- $\frac{3}{4}$  did not publish how many complaints were made to the ICO.

### **FOI and Local Government: surveys by the Constitution Unit covering the six years from 2005 to 2010**

A 2005 report (Constitution Unit, 2005) produced by University College London's (UCL) Constitution Unit on behalf of the Improvement and Development Agency investigated the performance of Local Authorities during the first six months after the introduction of the Freedom of Information Act (Freedom of Information Act 2000). The primary purpose of the study was to understand how local authorities coped with the Act during this period by studying the numbers and types of requests they had received, analysing the problems they had encountered and exploring the lessons they had learned.

The Constitution Unit subsequently ran a series of six annual reports examining the experience of Local Authorities (Constitution Unit, 2005-2011). These six annual surveys from 2005 to 2010 covered the experiences with FOI of local authorities in England. Between about 28% and 33% of

these authorities provided substantive responses to most questions asked in the surveys (112 authorities in 2005, 118 in 2006, 121 in 2007, 110 in 2008, 117 in 2009 and 104 in 2010).

The findings indicated that:

- The number of requests made to English local councils had increased by 328% from 2005 to 2010;
- An estimated 197,773 requests were made to English local councils in 2010, at a total cost of £31.6 million (averaging £159.80 per request);
- There were big differences in request volumes depending on council type: District councils received only a third of the volume of requests that county councils and London boroughs received;
- There were wide differences in some compliance indicators among council types: rates of fully disclosing information, withholding information, and hours taken to process requests differ markedly; and
- All council types improved their performance in answering requests on time.

Looking at the total request outcomes across all local government councils in England from 2005 to 2010, the percentage of refusals remained relatively steady, at 6.3% in 2010 and 8.3% in 2005. The percentage of refusals subject to internal reviews fluctuated during this period, ranging from 14.6% to 26%.

When examining the latest survey in detail, the authors estimated that between January and December 2010 the 353 local authorities in England received 197,737 requests for information under the FOI Act or the EIRs. The average number of requests received per council was 356, with 313 resulting in full release, 14 resulting in no release and 3 resulting in internal reviews in 2010.

Extrapolating the survey findings out to all English councils, research found that in 79.1% of requests information was fully disclosed, in 6.3% of requests the information was withheld, 4.7% of requests were withdrawn and in 9.9% the information was partially disclosed. In terms of timeliness, across all English councils there was average timeliness rate of 87.6%.

### Government statistics

LG Inform is the local area benchmarking tool from the Local Government Association. It brings together in one accessible place a range of key performance data for authorities, alongside contextual and financial information, in an online tool. Users can view data from over 6,600 individual items, make comparisons between their authority and other councils or groups of councils. Despite utilising a number of key relevant search teams such as “FOI”, “freedom of information”, “freedom of information requests”, “FOI performance” and others, no benchmarking data was identified on Local Authorities FOI compliance on LG Inform.

## Conclusions

As outlined above, there is a substantial knowledge gap when looking at the performance of public bodies in responding to FOI requests, particularly when compared with the substantial amount of information that exists on the compliance of central government departments.

The data that does exist is limited in terms of timeliness, availability, accessibility and completeness. The detailed information that is available has been collated through direct FOI requests and surveys of Local Authorities, but this information is more than 3 years old and limited in its coverage across public bodies. The existing secondary evidence has predominantly focussed upon the compliance of local authorities. Data on the compliance of executive agencies, public bodies in the health & social care sector, such as NHS trusts, Clinical Commissioning Groups and individual GP practices, or public bodies operating in other sectors is limited.

Predominantly, public bodies have made only a small number of figures on their compliance publicly available, and these tend to be very limited in scope. In addition, there is a lack of consistency in how data is collected by public bodies both across the timeframe the data represents/frequency of collection, how responses are recorded and what the categories of request outcomes represent. For instance, one public body published that they had answered all of the requests they received “promptly”, without clearly defining whether this was tied to the deadline of 20 working days. Lastly, whilst some information may be published by public bodies in their annual reports and stick to clearly defined terms for outcomes, it may in fact be incomplete with several data fields missing.

The data that is available, however, does paint a picture of compliance that has been very mixed over time and mixed across different public bodies, with significant ranges in the number of requests received, timeliness of responses and in response outcomes.

## Annex I – List of Public bodies annual reports checked

Organisation	Annual report contained FOI compliance data (Y)
Alder Hey Children's NHS Foundation Trust	
Ashfield District Council	Y
Bank of England	Y
Barking, Havering and Redbridge University Hospitals NHS Trust	
Barts Health NHS Trust	
Basildon Borough Council	
Bedfordshire Hospitals NHS Foundation Trust	
Birmingham and Solihull Mental Health NHS Foundation Trust	
Bolton Metropolitan Borough Council	Y
Bolton NHS Foundation Trust	
Brent Clinical Commissioning Group	
Brighton and Hove City Council	
Buckinghamshire County Council	
Cambridge City Council	Y
Cambridge University Hospitals NHS Foundation Trust	
Cambridgeshire Community Services NHS Trust	
Castle Point Borough Council	
Chelmsford City Council	
Chelsea and Westminster Hospital NHS Foundation Trust	Y
Cheshire and Wirral Partnership NHS Foundation Trust	
City of London	
College of Policing	Y
Cornwall Partnership NHS Foundation Trust	
Cotswold District Council	Y

Organisation	Annual report contained FOI compliance data (Y)
Croydon Clinical Commissioning Group	
Croydon Health Services NHS Trust	
Derby City Council	Y
Devon Partnership NHS Trust	
East Hampshire District Council	Y
East London NHS Foundation Trust	
East Suffolk Council	Y
Eden District Council	
Equality and Human Rights Commission	Y
Fareham Borough Council	
Gambling Commission	Y
Gateshead Health NHS Foundation Trust	
Gloucester City Council	Y
Gloucestershire Health and Care NHS Foundation Trust	
Greater London Authority	Y
Guy's and St Thomas' NHS Foundation Trust	
Hampshire Hospitals NHS Foundation Trust	
Harrogate and District NHS Foundation Trust	
Havant Borough Council	Y
Health & care professions council	Y
High Peak Borough Council	
Homerton University Hospital NHS Foundation Trust	
Imperial College Healthcare NHS Trust	
Kent Community Health NHS Foundation Trust	Y
King's College Hospital NHS Foundation Trust	Y
Kingston Clinical Commissioning Group	
Kingston Hospital NHS Foundation Trust	

Organisation	Annual report contained FOI compliance data (Y)
Lancashire County Council	
Leeds and York Partnership NHS Foundation Trust	
Leeds Community Healthcare NHS Trust	
Lincolnshire Community Health Services NHS Trust	
London Borough of Barnet	
London Borough of Harrow	Y
London Borough of Newham	
Mid Sussex District Council	Y
Moorfields Eye Hospital NHS Foundation Trust	
National Police Chiefs' Council (NPCC) (representing all police forces)	Y
NHS Hardwick Clinical Commissioning Group	
NHS Leeds Clinical Commissioning Group	Y
NHS Sheffield Clinical Commissioning Group	Y
North East Lincolnshire Council	
North East London NHS Foundation Trust	
North Essex Partnership University NHS Foundation Trust	
North Lincolnshire Clinical Commissioning Group	Y
Northern Devon Healthcare NHS Trust	
Northern Lincolnshire and Goole NHS Foundation Trust	
OfCom	Y
Oldham Metropolitan Borough Council	
Oxleas NHS Foundation Trust	
Royal Borough of Greenwich	Y
Royal Borough of Kensington and Chelsea	Y
Royal Devon and Exeter NHS Foundation Trust	Y
Royal Free London NHS Foundation Trust	
Sevenoaks District Council	

Organisation	Annual report contained FOI compliance data (Y)
Social Work England	Y
Somerset NHS Foundation Trust	
South Buckinghamshire District Council	
South West London and St George's Mental Health NHS Trust	
South West London Clinical Commissioning Group	Y
Southend-on-Sea Borough Council	
St Helens Metropolitan Borough Council	Y
Taunton and Somerset NHS Foundation Trust	
Tendring District Council	
The Crown Estates	Y
The Electoral Commission	Y
The Parole Board	Y
The Pensions Regulator	Y
The Rotherham NHS Foundation Trust	
Torridge District Council	
Tower Hamlets Clinical Commissioning Group	
Transport for London	Y
UK Research and Innovation	Y
UK Space Agency	Y
University College London Hospitals NHS Foundation Trust	
University Hospitals Coventry and Warwickshire NHS Trust	
University Hospitals Dorset NHS Foundation Trust	
University Hospitals Of Leicester NHS Trust	
University Hospitals Of Morecambe Bay NHS Foundation Trust	
University Hospitals Plymouth NHS Trust	Y
University Hospitals Sussex NHS Foundation Trust	

	Organisation	Annual report contained FOI compliance data (Y)
	Visit Britain	Y
	West London NHS Trust	
	West Suffolk NHS Foundation Trust	
	Westminster City Council	Y
	Wiltshire Council	Y
	York and Scarborough Teaching Hospitals NHS Foundation Trust	
	Youth Justice Board	Y



## Annex II – List of Public bodies contacted via email

Organisation
Arts Council
College of Policing
Companies House
Crown Estates
The Driving Standards Agency (DVSA)
Food Standards Agency (FSA)
HM Prisons Service/Inspectorate of Prisons/Probation Service
Health Education England
Historic England
Insolvency service
Legal Ombudsman
Met Office
Royal Mint
National Highways
UK Research and Innovation (UKRI)
Natural England
Network Rail
Office of Communications (Ofcom)
Office of Budget Responsibility
Parole Board
The Pensions Regulator
Privy Council Office
Public Health Wales
Social Work England
Sport England
Debt Management Office

	Organisation
	UK Space Agency
	Youth Justice Board
	Equalities and Human Rights Commission

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“

IFF Research illuminates the world for organisations businesses and individuals helping them to make better-informed decisions.”

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### 1. Being human first:

Whether employer or employee, client or collaborator, we are all humans first and foremost. Recognising this essential humanity is central to how we conduct our business, and how we lead our lives. We respect and accommodate each individual's way of thinking, working and communicating, mindful of the fact that each has their own story and means of telling it.

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